



Why You Should Care About Federal Labor Law Even If You Have A Non-Unionized “At-Will” Workforce

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If you are a private employer with a non-unionized workforce of “at-will” employees, you may be surprised to learn that you must still comply with portions of the federal National Labor Relations Act (NLRA).^[i] For public employers, see the **Public Employer Labor Sidebar**. As discussed below, even innocent mistakes in this area can lead to entanglement with a federal agency and litigation.

The Stakes

A violation of the NLRA can lead to a charge of “unfair labor practices” being brought against your business by the National Labor Relations Board (NLRB) in a federal administrative court. The NLRB may investigate, prosecute, and award a wide variety of remedies, including employee reinstatement, back pay, and an order to stop any unlawful employment policies and practices.

Non-Unionized Employee Rights

Your non-unionized “at-will” employees have several rights under the NLRA, including the right to engage with other employees for mutual aid or protection, e.g. employee attempts to improve wages, hours and other working conditions^[ii].

Innocent Mistakes

Importantly, an employer commits an unfair labor practice not only if it intentionally interferes with these rights, but even if it unwittingly engages in conduct which reasonably tends to interfere with or “chill” the free exercise of these rights. Whether a policy or practices strays into an unfair labor practice depends on the particular facts. In some cases, the NLRB carefully weighs competing employee and employer interests. A change in a single fact might change the outcome in a case. Below are examples of employer policies and practices which the NLRB found to be unfair labor practices under the specific facts of those cases.

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PRACTICE AREAS

Employer Services

Employment Litigation

Labor Relations



- A policy which prohibited employees from discussing salary and wage information
- A handbook which stated that its contents are confidential and for internal use only
- A requirement in an arbitration agreement that the employee must keep settlement agreements confidential
- A rule prohibiting employees' use of cell phones during work hours at any time, including in nonwork areas when employee is not working
- A rule prohibiting communications among employees that are intended to harm the reputation of the employer or its management
- An arbitration agreement which required arbitration of all claims (**See related article on Arbitration**)
- A rule stopping employees from communicating with the media regardless of whether the communication concerned confidential information

Going Forward

When you are writing employment policies and enforcing rules, keep in mind that your non-unionized "at-will" employees have enforceable rights under the NLRA. To be sure, as an employer you also have certain rights under the NLRA which may counter-balance your employees' rights. Please contact Karl Butterer at kbutterer@fosterswift.com or 616-726-2212 to help you strike the right balance in your policies and practices to help you avoid charges of unfair labor practices.

^[i] Some categories of employees are not subject to the NLRA.

^[ii] The NLRA includes additional employee rights, such as the right to form and join unions, which are beyond the scope of this article.