But We Don’t Have a Union!

The (New) NLRB’s Continuing Attack on Non-Union Workplace Policies and Practices

Daniel B. Pasternak
Kleenex, Xerox, Band-Aids…and the NLRB?

• Mark Pearce, Chairman, National Labor Relations Board

  ➢ A “household word” for all workers, not just those affiliated with organized labor

  ➢ “We want the agency to be known as the resource for people with workplace concerns that may have nothing to do with union activities.”
Today’s Agenda

• Summary of the National Labor Relations Act and the Board

• The NLRB’s Focus on Non-Union Employer Policies/Practices
  - Confidentiality
  - Courtesy
  - Uniforms and Dress Codes
  - Off-duty employee access
  - Contact with news media and law enforcement
  - Social Media
Summary of the National Labor Relations Act

• New Deal legislation, passed in 1935
  ➢ Intended to “promote industrial stability”

• Guarantees employees the right to:
  ➢ “form, join, or assist labor organizations…”
  ➢ “bargain collectively through representatives of their own choosing…”
  ➢ “engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection…”
  ➢ …or “refrain from doing so.”

• These are referred to as “Section 7” rights

• Apply to “employees” as defined in the Act (not supervisors/managers/executives)
Summary of the National Labor Relations Act

• NLRB
  ➢ Administrative agency that administers and enforces the NLRA
  ➢ Five member Board in Washington, D.C.
  ➢ Political appointees (advice and consent)
  ➢ Majority comprised of members aligned with political party of current administration
    – Chairman Pearce; Members Hirozawa and Schiffer (D)
    – Members Johnson and Miscimarra (R)
  ➢ Network of 32 Regional Offices
    – Regions 21 and 31 (Los Angeles)

• General Counsel (Washington, D.C.)
  ➢ NLRB’s chief prosecutor
  ➢ Also a political appointee
  ➢ Richard Griffin (former Board Member (recess appointee))
  ➢ Former in-house attorney for International Union of Operating Engineers
Summary of the National Labor Relations Act

- NLRB’s recent focus has been on Section 7 rights, and, in particular, “protected concerted activity” engaged in by employees in non-union workplaces.

- Why?
  - Decline in union density (7% of private sector workforce)
  - Corresponding view that National Labor Relations Act, as applied only in the union workplace, was losing its relevance
  - Activist agenda among current Board members and General Counsel driving outreach to non-union workers
  - Administration attempt to compensate for failure to secure passage of EFCA
Summary of the National Labor Relations Act

- Why should I care what the NLRB is doing?
  - NLRB taking aggressive positions - Boeing case in South Carolina as an example
  - New rules coming (accelerated procedures for union representation elections)
  - Aggressive outreach campaign
  - Recent NLRB decisions and policy initiatives demonstrating its intent to expand the NLRA’s reach to non-union workplaces
NLRB Outreach

- NLRB Mobile App

Mobile App

Download the new NLRB mobile app

The app provides employers, employees and unions with information regarding their rights and obligations under the National Labor Relations Act.

Download for your iPhone
Download for your Android
Read the news release
NLRB Outreach

- NLRB Twitter feed

You have the right to address work-related issues and share information about pay, benefits, and working conditions with coworkers on Facebook, YouTube, and other social media.

Download the mobile app to learn more

www.nlrb.gov/apps

NLRB @NLRB · Feb 21
Download the NLRB mobile app: nlrb.gov/apps
pic.twitter.com/wb5LelhWpZ

Flag media
NLRB Outreach

- NLRB Twitter feed

Whether you are represented by a union or not and whether you are a union member or not, you have the right to join together with your coworkers to improve your lives at work.

Download the mobile app to learn more

www.nlrb.gov/apps
Summary of the National Labor Relations Act

• NLRA applies to all employers, union and non-union, that meet the Act’s jurisdictional requirements.
  ➢ Not based on number of employees (unlike, e.g., Title VII; FMLA)
  ➢ Based on the business’ relationship to interstate commerce
    – Retail: $500,000 in gross annual sales/some interstate business
    – Non-retail: $50,000 in direct/indirect inflow/outflow of goods and services across state lines
    – Some industry specific thresholds (e.g., cemeteries; day care centers; gaming)
    – Unchanged since 1959

• Result: most private sector employers are covered, including more than 6 million small businesses
Summary of the National Labor Relations Act

The Act Applies To All US Employers

Not Just Those With Unions
Workplace Rules

• The NLRB’s Analytical Framework for Workplace Policies/Rules

  ➢ Two-step approach

  – A workplace policy or rule is unlawful if:

    » it explicitly restricts protected activity, or

    » employees would reasonably construe the policy or rule to prohibit protected activity; or the policy/rule was promulgated in response to protected activity; or the policy/rule was applied to restrict employees’ engaging in protected activity.

    – Note that it is “would,” not “could.”

  – In reading rules, the Board should “refrain from reading particular phrases in isolation” and should not seek out “arguable ambiguity through parsing the language of the rule, viewing [a] phrase … in isolation, and attributing to the [employer] an intent to interfere with employee rights.”

    » *Lafayette Park Hotel*, 326 NLRB 824 (1998)
Workplace Rules

• Confidentiality Rules - Business Information
  - NLRB has long recognized that employers have a valid business justification for rules prohibiting employees from disclosing confidential company information.
  - NLRB also has long held that employers may not forbid employees from discussing their own compensation, including pay, bonuses, and commission, and other matters of workplace concern.
  - *Flex Frac Logistics*, 358 NLRB No. 127 (2012)
    - Rule prohibited disclosure of “confidential information” which included “personnel information and documents.”
    - Confidentiality rule held unlawful because it was “broadly written with sweeping, nonexhaustive categories that encompass nearly any information related to the Respondent.”
    - “Personnel information and documents” was not defined to exclude wages, and reference to “financial information, including costs” necessarily includes wages and thereby reinforces the likely inference that employees cannot discuss wage issues.
  - *MCPc, Inc.*, 360 NLRB No. 39 (2014)
    - Confidentiality rule in handbook prohibited dissemination of “personal or financial information”; held unlawful. Separate rule prohibiting disclosure of “purchase prices or processes… prices, service, problems, or other information about one vendor or customer”; held not unlawful – designed to protect the confidentiality of the employer’s proprietary business information; would not be reasonably interpreted to relate to wages.
Workplace Rules

• Confidentiality Rules – Business Information
  ➢ *Copper River of Boiling Springs, LLC, 360 NLRB No. 60 (2014)*
    – Rule prohibited “[u]nauthorized dispersal of sensitive Company operating materials or information to any unauthorized person or party. This includes but is not limited to policies, procedures, financial information, manuals, or any other information contained in Company records.”

• Your turn: lawful or unlawful?
  • ALJ concludes that although reference in rule to “financial information” could be construed to include wage and benefit rates – which employees have a Section 7 right to discuss – the rule itself does not refer to wage and benefit information and is limited to the dissemination of “sensitive Company” information, which the rule does not suggest would include information appearing on an employee’s paystub.
    – “I conclude that a person reading the rule in its total context would not understand it to prohibit employees from discussing and disclosing information about their wages, hours, and working conditions.”
    – GC does not appeal.

• Take-away: Evolving area of the law, with considerable uncertainty and inconsistent rulings. Cases suggest that generic confidentiality rules that do not specifically define what information is to be kept confidential, or that do not exclude certain information employees have the right to discuss, will be found overbroad and unlawful (but not always).
Workplace Rules

• Confidentiality Rules - Internal Investigations
  ➢ Many employers have a blanket rule that requires that employees participating in internal investigations not discuss an ongoing investigation with others.
    – Purpose is to protect employees from retaliation for raising concerns, and to maintain the integrity of the investigation (“getting the stories straight”).

• *Banner Health System d/b/a Banner Estrella Medical Center, 358 NLRB No. 93 (2012)*
  ➢ Employers have no generalized interest in confidential treatment of investigations. Blanket rule overbroad and unlawful where potential, even if unintended, interference with Section 7 rights (“mutual aid or protection”).
  ➢ A narrow rule may be lawful if an employer can show a “legitimate business justification”:
    » to protect witnesses;
    » to prevent the destruction of evidence;
    » if there is a threat that subsequent testimony would fabricated; or
    » the need to prevent a cover-up.

➢ Problems:
  » When are these factors ever not present?
  » What evidence is necessary to make the required showing? (not defined)
  » Best practice: “individualized assessment whether it is appropriate or necessary to ask that employees maintain the confidentiality of some information during the investigation in order to protect any employee, customers, or other third party, if necessary to preserve any evidence relevant to the investigation, or if disclosure of the investigation or of matters related to investigation could compromise the company’s ability to conduct a thorough, objective, factually-accurate investigation.”
Workplace Rules

• Courtesy Rules
  - **Karl Knauz Motors, Inc.,** 358 NLRB No. 164 (2012)
  - “Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or other language which injures the image or reputation of the Dealership.”
    - Unlawful because “employees would reasonably construe its broad prohibition against ‘disrespectful’ conduct and ‘language which injures the image or reputation of the Dealership’ as encompassing Section 7 activity.”
      » Nothing in the rule excluded Section 7 activity.
      » “Employees reading the rule would reasonably assume that the Respondent would regard statements of protest or criticism as ‘disrespectful’ or ‘injurious to] the image or reputation of the Dealership.”
    - Problem: NLRB majority’s interpretation was based on a parsing of the language, not a holistic reading of the rule.
    - Dissent (Member Hayes) argued that reading the rule as a whole explains that it only seeks to “promote civility and decorum in the workplace” and is a “common-sense behavioral guideline for employees” that only governs the tenor, and not the content, of speech.
  - **Costco Wholesale Corporation**, 358 NLRB No. 106 (2012) (3 weeks before *Knauz*)
    - Unlawful: Rule prohibiting electronic posting of statements that “damage the Company, defame any individual or damage any person’s reputation.”
    - Lawful: Rule requiring employees to maintain “appropriate business decorum.”
Workplace Rules

• Courtesy Rules
  ➢ *Copper River of Boiling Springs, LLC*, 360 NLRB No. 60 (2014)
    – Rule prohibited “[i]nsubordination to a manager or lack of respect and cooperation with fellow employees or guests. This includes displaying a negative attitude that is disruptive to other staff or has a negative impact on guests.”
    – ALJ concludes that the rule forbidding “displaying a negative attitude” does not limit employees’ rights to have conversations about any particular subject. Also, the rule contains limiting language – does not ban all displays of negative attitudes, only those that are “disruptive to staff or ha[ve] a negative impact on guests.” The limitation therefore is linked to the employer’s legitimate business concerns, and employees would not read it to prohibit Section 7 activity.
    – Luck of the draw: NLRB majority (2 Rs) affirm. Chairman Pearce (D) dissents: employee would reasonably interpret the rule’s prohibition on insubordination and displaying a negative attitude as prohibiting discussion of controversial topics or being critical of the employer.
    – Compare with *Hyundai America Shipping Agency*, 357 NLRB No. 80 (2011); rule found lawful where prohibition on “exhibiting a negative attitude” was linked to “toward or losing interest in your work assignment.”
    – Don’t get too excited about this one…

• Take-away: courtesy rules must focus on how employees act, not what they say. The more specific the restriction, the better – link to the specific behavior you are trying to limit and tie to business objectives (i.e., customer satisfaction), not as a means to insulate the employer from employee criticism.
Workplace Rules

• Uniform/Dress Code Policies
  ➢ Many if not most employers have either policies regarding employee uniforms or a dress code that applies in the workplace.
  ➢ *Target Corp.*, 359 NLRB No. 103 (2013)
    – Policy prohibited Target associates from wearing “any buttons or logos on [their] clothing (unless approved by [their] team leader).”
    – Employees’ right to wear union buttons protected since 1945 (*Republic Aviation*) unless special circumstances exist.
      » Customer contact and uniform requirements (red shirt and khaki pants) not special circumstances.
      » Target permitted other buttons and pins without concern over public image.
      » Special circumstances = patient care, food safety, etc.
  ➢ *World Color (USA) Corp.*, 360 NLRB No. 37 (2014)
    – Prohibited wearing baseball caps other than company-logo caps.
      » Prohibited on its face wearing of caps with union insignia.
      » No special circumstances - no safety features in company cap; no legitimate concerns over gang colors/insignias/activity; no customer interaction.
  ➢ Take-away: reasonable uniform policies or dress codes that place restrictions based on legitimate business justifications will be deemed lawful; those that seek to prevent employee expression without legitimate business justification will not.
Workplace Rules

• Off-Duty Employee Access
  - Rule restricting employees from being on the employer’s property when not actively on duty.
  - *Tri-County Medical Center, 222 NLRB 1089 (1976)*
    - NLRB balances employer’s property rights with employees’ rights to engage in Section 7 activities.
    - An off-duty access policy is valid only if it:
      » limits access solely with respect to the interior of the facility and other working areas;
      » is clearly disseminated to all employees; and
      » applies to off-duty employees seeking access to the plant for any purpose and not just to those engaging in union activity.
  - Recent cases have focused on the third prong of *Tri-County*
    - *St. John’s Health Center, 357 NLRB No. 170 (2011)*
      » Rule did not prohibit off-duty access for all purposes; allowed attendance at Health Center-sponsored events, retirement parties, baby showers, etc. - unlawful
    - *Remington Lodging & Hospitality, LLC, 359 NLRB No. 95 (2013)*
      » Rule prohibiting off-duty employee access unlawful because it was not limited to the interior areas of the hotel and because it gave management the discretion whether to grant or deny access.
    - Compare *Sodexho America LLC, 358 NLRB No. 79 (2011)*
      » Rule prohibited all off-duty access unless to visit a patient or to receive medical care; NLRB held the rule did not violate third prong of *Tri-County*
    - Compare *Target Corp., 359 NLRB No. 103 (2013)*
      » Off-duty access rule unlawful (not limited to interior of store, no business justification for restriction applied to parking lots), but policy requiring employees notify management of unfamiliar people loitering in parking lot lawful (addressed safety issues and would not be interpreted to affect Section 7 rights).
Workplace Rules

• Off-Duty Employee Access
  ➢ Take-away:
    – A policy restricting off-duty employee access must be carefully drafted, and carefully enforced.
    – The NLRB presumes that an employer implements these types of policies to restrict employees’ ability to communicate with each other about issues the employer would prefer employees not collectively discuss – unions, wages, working conditions, etc.
    – The Tri-County standard can be difficult to meet in the real world.
    – The key is in uniformly policing the policy. Disparate enforcement will lead to violations.
  ➢ What about non-employee access?
    – Non-employees do not have a right to access employer property to handbill, picket, etc.
    – First issue is whether the employer has a property right.
    – Next issue is whether the employer has discriminatorily enforced its property rights.
      » Allowing non-union organizations to have access, i.e., charities, while not allowing union access.
      » Exception for “isolated beneficent acts.”
    – NLRB finds violations where disparate enforcement; courts reject, finding that discrimination requires treating like organizations differently. Since charities are not the same as unions, not discrimination to prohibit unions but allow charities.
    – Currently at issue in pending Roundy’s, Inc. case.
    – State law exception in California: Peaceful picketing on a private sidewalk outside a targeted retail store during a labor dispute cannot be enjoined as a trespass under California’s Moscone Act and Labor Code. (Ralph’s Grocery Company v. UFCW; Cal. S. Ct. 2012)
Workplace Rules

• Contact with News Media and Law Enforcement
  • Many employers implement policies prohibiting employees from speaking to the news media or law enforcement regarding work issues. Why?
  
  • DirecTV U.S. DirecTV Holdings, LLC, 359 NLRB No. 54 (2013)
    • First rule prohibited any contact by employee with the media.
      • Unlawful: would be reasonably construed to limit Section 7 activity, such as publicizing a labor dispute. The rule did not distinguish between protected and unprotected communications, such as maliciously false statements
    • Second rule prohibited employees from contacting or commenting to the media without preapproval from the employer’s PR department.
      • Unlawful: can’t require preapproval to engage in protected activities.
    • Third rule prohibited employees from speaking with law enforcement without first notifying the employer’s security department.
      • Unlawful: An employee would reasonably construe the rule to require him or her to contact the employer before participating in an NLRB investigation. Although an employer may have an interest in learning about law enforcement investigations, the rule did not clarify that it did not apply to activity protected by the Act.

  • Take-away: again, careful drafting is required to address the NLRA’s requirement that rules will not be reasonably interpreted to interfere with protected rights.
• Social Media
  ➢ The NLRB has recently placed a heavy focus on social media as a means to engage in protected concerted activity.
    - Multiple GC memoranda; NLRB tweets
    - Facebook as the 21st century water cooler
    - Increasing number of cases involving employers taking adverse employment action based on employees’ social media posts, tweets, etc.
    - Same as it ever was: social media-based conduct is entitled to the same protections as any other form of employee communication.
Workplace Rules

• Social Media

  Karl Knauz Motors, Inc., 358 NLRB No. 164 (2012)
  - Car salesman posted photos and comments on his personal Facebook page.
  - Some were critical of the employer’s food and beverage choices as part of a launch event for the new BMW 5-Series.
  - “I am happy to see, that Knauz went “All Out” for the most important launch of a new BMW in years… The new 5 series. A car that will generate, tens of millions of dollars in revenue for Knauz, over the next few years. The small 8oz bags of chips, and the $2.00 cookie plate from Sam’s Club, and the semi fresh apples and oranges were such a nice touch… But to top it all off … The Hot Dog Cart. Where our clients could attain a over cooked weiner and a stale bun.”
  - But, others posts concerned an accident that occurred at the neighboring Land Rover dealership (also owned by Knauz)
Photos - This Is your Car: This Is Your Car On Drugs:

1 of 4  Back to Album  My Photos

I love this one... The kids pulling his hair out... "Du, what did I do... Oh no, Is Mom gonna give me a, time out"

Added June 14  Like  Comment

Forrest Roth, Amanda Sexton and Kyle Baumann like this. FRIEND

Steve Kwasmanshould be titled: "New Car Was debuts at Knauz Land Rover"
June 15 at 9:58am  Like

Casey Felling I've been wanted to do that for years with some of my customer's cars. Glad those guys at LR finally had enough!
June 15 at 11:40am  Like

BUCHER

FINGER B MDR

Signatures: EM. ADR
Workplace Rules

• Social Media
  ➢ *Karl Knauz Motors, Inc.*, 358 NLRB No. 164 (2012)
    - Knauz’s management asked the employee to delete his Facebook posts, which he did.
    - Knauz terminated the employee six days later.
    - NLRB alleged he was fired for posting the comments and photos about the unremarkable snacks and their effect on his and coworkers’ ability to sell cars and thereby earn commissions – i.e., protected concerted activity.
    - Employer claimed it terminated the employee for posting pictures of the accident involving another salesperson while on a test drive with a customer, that he never made any claims regarding the effect of food and drink choices on sales, and that the Facebook postings did not relate to any terms or conditions of employment, nor any protected concerted activity.
    - NLRB held that the discharge was lawful because the employee was terminated only for posting the accident pictures, which was not protected concerted activity.
Workplace Rules

• Other Social Media Cases
  
  ➢ Design Technology Group LLC dba Bettie Page Clothing, 359 NLRB No. 96
    – Three sales associates were terminated immediately after Facebook discussion expressing frustration at lack of responsiveness to complaints about safety issues in the store. Employer offered shifting reasons for employee terminations. Easy case: violation found; Facebook activity was classic protected concerted activity.

  ➢ Advice Memorandum re Tasker Healthcare Group (May 8, 2013)
    – Private chat message among current and former employees
    – Current employee complains about a current supervisor who gave her something to do at work and adds:

      Back the freak off . . . They are full of s@$$(+$@$ . . . They seem to be staying away from me, you know I don’t bite my tongue anymore, F@)$($+$@$! . . FIRE ME . . . Make my day!!
Workplace Rules

• Other Social Media Cases
  ➢ *Richmond District Neighborhood Center* (ALJ decision; Nov. 5, 2013)
  ➢ Teen activity leaders at community center chat by Facebook
    “Let them do the numbers, and we’ll take advantage, play music loud, get artists to come in and teach kids how to graffiti up the walls and make it look cool, get some good food. I don’t feel like being their bitch and making it all happy-friendly middle school campy. Let’s do some cool $s@$ and, and let them figure out the more. . . Let’s f)(@$)( it up. . . “
    – Terminated for concern that they would not follow manager’s directions and could endanger youth.
    – Not protected; terminations lawful.
Workplace Policies

• Other Social Media Cases
  ➢ *World Color (USA) Corp.*, 360 NLRB No. 37 (2014)
    - An employee posted critical statements about the employer on his Facebook page.
    - Employee was “friends” with several coworkers and his supervisor.
    - When business declined and reassignments were made, the employee asked his supervisor why he had been selected for reassignment.
    - “It isn’t always about production. Don’t you think that they know about what you posted on Facebook?”
    - ALJ found that his reassignment was retaliation for comments made on Facebook.
    - Board reverses (Pearce, Hirozawa, Johnson):
      » Although Facebook postings can be protected concerted activity, the trial record did not include copies of the employee’s posts and did not reveal the nature of the posts – whether they concerned terms and conditions of employment or were intended for, or in response to, his coworkers.
      » Not enough to conclude posts were protected concerted activity, so insufficient evidence that the reassignment was for engaging in conduct protected by the Act.
    - Take-aways:
      » Be careful of supervisors being “friends” with non-supervisors.
      » Preserve evidence if you think social media posts may be relevant to adverse employment actions.
      » Even Democrats on the Board recognize limitations on social media evidence.
Workplace Rules

- Social media conduct cases (not policy cases)
  - Summary: NLRB applies a three step approach to social media conduct cases (i.e., those not involving social media policies)
    - Was the social media-related conduct, i.e., Facebook posting, tweet, etc., concerted activity, or merely individual griping?
      - Is pressing enough to be concerted activity?
        - Three D, LLC d/b/a Triple Play Sports Bar and Grille, JD(NY)-01-02 (January 3, 2012) (on exceptions)
    - Was the conduct protected (i.e. did it relate to terms and conditions of employment or was it for purposes of mutual aid or protection)?
    - If protected and concerted, was the conduct so outrageous as to lose the protection of the Act?
Workplace Rules

• Social media conduct cases – take-aways:
  ➢ Posts by employees on social media sites that generate comments from coworkers are likely to be concerted and protected, provided they relate to the workplace.
  ➢ Even if no comments, if an employee’s post is on a site designed to be seen by fellow employees, and the post is intended to initiate group action, employee is likely protected.
  ➢ Posts that are malicious, recklessly false, or that advocate unlawful, discriminatory, or violent acts will not be protected, but disparaging, and even vulgar and profane posts, will be protected if they meet the other criteria.
  ➢ Posts that relate to purely personal issues, or posts to non-employees, even if related to workplace issues, may not be protected unless there is clear evidence of an intent to initiate group action among that individual’s coworkers.
Workplace Rules

• Social Media policies
  ➢ Two-step inquiry from December 2009 Advice Memorandum
    – First, does the policy explicitly restrict Section 7 protected activities? If so, unlawful.
      » Must ensure that policies do not facially violate the NLRA by prohibiting discussion of wages, hours, or working conditions, or “disparaging” the company, or the like.
    – Second, policy is unlawful if:
      » employees would reasonably construe the language to prohibit Section 7 activity;
      » rule was promulgated in response to union activity; or
      » rule has been applied to restrict the exercise of Section 7 rights.
        – the standard Lutheran Heritage Village Livonia test.

  ➢ Additional guidance from May 2012 OM Memorandum
    – Rules that are ambiguous as to application to Section 7 activity and contain no limiting language or context that would clarify to employees that the rule does not restrict Section 7 activities, are unlawful.
    – In contrast, rules that clarify and restrict their scope by including examples of clearly illegal or unprotected conduct, such that they could not be reasonably construed to cover protected activity, are not unlawful.
    – Sample social media policy the NLRB deems lawful (Wal-Mart)
Workplace Rules

- **Social Media: the best we can do…for now…**
  - Use caution when imposing discipline based on employees’ conduct on social media or violations of social media, internet, or related policies.
  - Also be mindful that the law concerning whether an employer’s review of protected concerted activity engaged in by employees through social media means constitutes unlawful surveillance is evolving (state law password protection legislation).
  - Employers may promulgate and enforce sufficiently-detailed social media policies prohibiting discussions concerning:
    - violations of Company harassment policy;
    - threats of violence;
    - disclosure of confidential or trade secret information;
    - business strategy, new product releases, sales prospects;
    - disparagement of competitors’ products and services (trade libel); and
    - defamation, e.g., untruthful statements by workers that company’s product is unsafe.
Workplace Rules

• Social Media: the best we can do…for now…
  - Employers may **not** maintain social media policies prohibiting discussion of, or discipline employees for discussing:
    - wages, benefits, working hours, other working conditions;
    - supervisors and managers;
    - management decisions;
    - discrimination or harassment in the workplace;
    - union organizing, campaigns, and activity;
    - lawful striking and picketing;
    - raising concerns about the employer with government agencies; and
    - employee and/or customer safety issues, e.g., truthful statements by employees that company has been cited for safety violations
  - Savings clauses/disclaimers -- not enough just to say policy is not intended to interfere with Section 7 rights. Have to be very specific (using examples).
Future Initiatives

- New NLRB General Counsel (Richard Griffin)
- NLRB General Counsel Memo 14-01 (February 25, 2014)
  - Mandatory submission to Division of Advice
    - GC initiatives – labor law/policy issues of interest to GC
    - Of particular note to non-union employers:
      » Use of employer email systems for Section 7 activity (reconsideration of Register-Guard)
      » Weingarten rights in non-union settings
Contact Information

Daniel B. Pasternak
daniel.pasternak@squiresanders.com
+1 602 528 4187