

Abstract

The National Labor Relations Act (NLRA) is a complex set of laws affecting all employees, unionized or not, that are not supervisors or independent contractors. Most notably, the NLRA protects employees' rights to "form, join, or assist labor unions and engage in "concerted activity" for their mutual aid and protection," including the right "to bargain collectively through representatives of their own choosing."

Overview

In 1935 Congress enacted the NLRA "to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy."

The National Labor Relations Board ("NLRB" or "the Board") was established in the same year to enforce NLRA laws. They categorize employer rules and policies in three ways:

- Lawful rules that do not prohibit or interfere with the NLRA or where potential future interference is outweighed by the rule;
- Rules that are decided on a case-by-case basis and;
- Rules that are unlawful due to interference with protected rights that cannot be legitimately justified to provide benefits or protections that outweigh the NLRA.

The Board generally evaluates workplace rules by weighing the balance of two things:

- 1) The nature and extent of the potential impact on NLRA rights and;
- 2) Legitimate justifications associated with the rule.

Unfair Labor Practices

Section 8 of the original NLRA outlines five unfair labor practices of employers:

- "To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7" (Collective Bargaining).
- "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it"
- "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization"
- Discrimination against employees who file charges or testify.
- Refusal to bargain collectively with the representative of the employer's employees.

What is a "Concerted Activity?"

The NLRB defines "Concerted Activity" as two or more employees acting together to try to improve their wages, hours or conditions of employment.

Here are some examples to remember when trying to identify "Concerted Activities" in your workplace:

- Protesting to improve working conditions
- Criticizing working conditions or supervisor job performance
- Discussing wage rates, bonuses or employment benefits with other employees
- Bringing group complaints to management
- Initiating a discussion with a group of employees about a term or condition of employment

Important Notes

- *The National Labor Relations Act (NLRA) is a complex set of laws affecting all employees, unionized or not, that are not supervisors or independent contractors.*
- *In 1935 Congress enacted the NLRA "to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy."*

Helpful Links

- [NLRB official NLRA page](#)

- Complaining about favoritism, managers or policies that affect employees

How Employers can Protect Themselves

The penalties employers can face if they violate the NLRA can include but are not limited to:

- Reinstatement of an employee who was unfairly terminated
- Repayment of earnings lost due to unfair termination
- Repayment of any legal fees, litigation costs or union fees incurred by an employee contesting unfair disciplinary actions
- Removal of terminated employees' disciplinary record
- Review and update of employer's employee handbook
- Posting of a notice of violation for at least two calendar months

The NLRA defines what rights employers have as well. The NLRB outlines the following rights Employers have under the NLRA:

- Dispute the union's election petition at a regional hearing.
- Ask the Board to review the Regional Director's direction of an election.
- File an election (RM) petition if the union's presumption of majority status is rebuttable, and you have a good-faith, reasonable uncertainty that the incumbent union still enjoys majority support. (A union enjoys an irrebuttable presumption of majority status (1) during the certification year and any extensions thereof; (2) for a "reasonable period" following voluntary recognition, Burns successorship, a settlement agreement in which you agree to bargain, or the Board's issuance of an affirmative bargaining order; and (3) during the term of a collective-bargaining agreement, up to 3 years.)
- File an election (RM) petition if a union asks for recognition.
- File with the Board objections to the union's conduct during the run-up to the election.
- File with the Board objections to the conduct of the election itself.
- Seek review, in a federal court of appeals, of the Board's certification of the union. (You cannot do so directly. To obtain court review, you must refuse to bargain with the union, and then petition the court to review the Board's decision finding your refusal to bargain an unfair labor practice.)
- File charges with the Board alleging that a union has violated or is violating the Act.
- Interview employees to prepare your defense in an unfair labor practice case if you provide employees certain assurances. You must communicate to the employee the purpose of the questioning, assure him against reprisals, and obtain his voluntary participation. Questioning must occur in a context free from employer hostility to union organization and must not itself be coercive. And questioning must not go beyond what is needful to achieve its legitimate purpose. That is, you may not pry into other union matters, elicit information concerning the employee's subjective state of mind, or otherwise interfere with employee rights under the Act.
- Defend against unfair labor practice allegations in a hearing before an administrative law judge.
- Appeal the decision of an administrative law judge or Board hearing officer to the NLRB.
- Petition a federal court of appeals to review an adverse NLRB unfair labor practice decision.

- Sue a union in court under Section 301 of the Labor Management Relations Act (LMRA) for breach of a collective-bargaining agreement.
- Sue a union in court under Section 303 of the LMRA for damages caused by unlawful secondary activity. (Primary as well as secondary employers have a right of action under Section 303.) (For further information about secondary union activity, see "for unions" in this app.)

How NOVAtime Protects Employers and Employees

NOVAtime 5000 Workforce Management / Time and Attendance solutions provide the tools that can keep employers compliant with the NLRA, and allow employees to protect themselves from potential violations. With highly configurable rules, pay codes, group definitions, and real-time attendance tracking, supervisors can avoid unfair scheduling practices. Likewise, employees can use the Employee dashboard to ensure hours are being recorded correctly and submit concerns to supervisors through the system.

In conjunction with respected lawyers and law firms, NOVAtime also offers complimentary webinars and on-site seminars aimed at educating supervisors, managers and employees on their rights.

Conclusion

The NLRA not only protects employees from unfair business practices, but also provides a guide for establishing and maintaining communication between employers and employee Unions. By making it illegal to threaten, coerce or formally punish employees for Unionizing or attempting to Unionize, the Act makes it possible for employees to ensure fair treatment by employers. It also promises fair dialogue for both sides, where employee demands are all represented by a single voice.

Bibliography

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NOVAtime Technology, Inc. was established in 1999 and is headquartered in Diamond Bar, California. By applying the most innovative technology and providing best practice services, NOVAtime has become a leader in the Time and Attendance / Workforce Management industry. Over 10,000 organizations have benefitted from the use of NOVAtime solutions, and the world's best-managed companies continue to select NOVAtime as the preferred solution provider. For more information about NOVAtime, please visit www.novatime.com or call 1-877-486-6682.

