

Are you National Labor Relations Act (NLRA) compliant?

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In 1935, Congress enacted the National Labor Relations Act (NLRA) intending to protect workers from harmful labor practices and encourage collective bargaining. Out of the NLRA came the National Labor Relations Board (NLRB), an independent federal agency created to enforce the NLRA. While the NLRA granted employees the right to form or join a union and engage in activities aimed at improving working conditions, many employers are unaware of the impact of the NLRA beyond its unionization rights.

The NLRA applies to all private workplaces (unionized and non-unionized) in the United States, and all businesses must ensure that their policies and practices do not violate the NLRA's protected activity provisions. Under the NLRA, employees have the right to act with co-workers to address work-related issues. These rights materialize in many ways that go above and beyond employees circulating a petition or joining together to protest working conditions. Concerted protected activities include employees talking openly about pay and benefits, talking to the media about working conditions in the workplace, and refusing to work in unsafe conditions. It is also important to note that it does not take several employees engaging in the activity for it to be a "concerted protected activity." Individual employees may be engaging in protected activity if they are acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action.

Ultimately, employers should not prohibit employees from talking about their pay and benefits and must be mindful of their confidentiality, workplace conduct, conflict of interest, and solicitation policies and whether they are NLRA compliant. Overly restrictive policies, while appearing reasonable on their face, may run afoul of the NLRA. For example, while an employer may prohibit an employee from posting something maliciously false or disparaging on social media, broad policy language prohibiting employees from posting anything negative or unsavory about an employer is likely unlawful.