

**An Introduction to the National Labor Relations Act and Protected Concerted Activity**

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Workplace Justice Summit  
September 2016

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**The National Labor Relations Board**

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- The National Labor Relations Board (NLRB) is an independent Federal agency created in 1935 by Congress to administer the National Labor Relations Act, the basic law governing labor relations involving unions, employees, and employers.

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**National Labor Relations Act**

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- The National Labor Relations Act (NLRA) gives employees the right to act together to try to improve their pay and working conditions, **with or without a union.**
- The NLRA guarantees the rights of employees to organize and bargain collectively with their employers, or to refrain from all such activities. The statute covers most private sector employers and the United States Postal Service. The law does not apply to the airline, or railroad industries, or to federal, state or local governmental agencies.

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**Protecting Employees' Rights**

- One of the NLRB's most important missions is to protect employees' rights in the workplace. We protect the bargaining process when unions and employers bargain over the terms and conditions of employment of employees and we protect employees against discrimination by their employers or by their unions. We also protect employers against unlawful conduct by unions.

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**The rights of employees are set forth in Section 7 of the NLRA**

Employees have 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**, and
- to refrain from any or all of such activities.

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**What are "concerted activities for the purpose of mutual aid or protection"?**

**Concerted** activities of employees are **protected** by law if they relate to:

- Wages
- Hours
- Other terms and conditions of employment

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**What makes conduct “concerted”?**

Employees’ activity will be considered “concerted” if it is engaged in with other employees or on the authority of other employees and not solely by and on behalf of the individual employee.

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**Protected Concerted Activity involves:**

- Two or more employees\*
- Acting together or on behalf of another
- For mutual aid or protection
- Concerning working conditions

\* An individual employee seeking to initiate or to induce or to prepare for group action, as well as an individual employee bringing truly group complaints to the attention of management may constitute protected concerted activity.

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**An individual can engage in protected concerted activity**

An employee makes statements at a safety meeting indicating her concern with matters which affected not only herself but all other employees.

Such conduct may be considered **concerted** and protected.

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Protected concerted activity by a single employee: individual raises concerns that are a “logical outgrowth” of concerns expressed by the group

Four employees who refused to work overtime when approached individually was the outgrowth of a prior concerted protest over a reduction in scheduled hours.

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Does this constitute protected concerted activity?

A supervisor overhears an employee asking another employee how much she is being paid per hour.

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Answer:

Employees’ discussions of wages are protected.

ALSO,  
rules prohibiting employees from discussing their wages with others violate Section 8(a)(1) of the Act.

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**Does this constitute protected concerted activity?**

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Employees contacted a state administrative agency regarding concerns over patient care, i.e., the effect of hot water on patients.

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**Answer:**

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The employees' concerted complaints to a state patient care hotline about the effect of hot water on patients were **not** protected because they did not relate to their interests as employees. Their complaints were on behalf of patients.

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**However...**

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Concerted complaints to a state agency about **working conditions** would be protected.

Example: calling a state or federal agency about an employer's lunch-hour policy may constitute protected concerted activity.

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What does this mean for employees?

It is unlawful for an employer to take action against an employee because of the employee's protected and concerted activity.

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Examples from National Labor Relations Board cases

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**Morganton, North Carolina Poultry processing plant**

A group of poultry workers walked off the job to protest a new requirement that they pay 50 cents per pair for the latex gloves they used on the line. As the workers gathered at a nearby church, two women told their story to a local newspaper and were quoted by name. They were soon fired.

Were the employees engaged in protected concerted activity?

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**Answer**

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The case ultimately went before the NLRB, which found the firings were unlawful because they punished concerted activity that was protected.

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**San Juan, Puerto Rico  
Construction Contractor**

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When a heavy thunderstorm hit one March afternoon, 13 workers building the foundation of a luxury hotel retreated to a trailer to wait out the downpour. Supervisors ordered them back to work, but the workers refused, citing health and safety concerns, and were fired on the spot.

Were the employees engaged in protected concerted activity?

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**Answer**

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After the regional NLRB office found sufficient evidence to call for a hearing, the contractor settled with the workers by offering backpay and reinstatement.

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### Moss Point, Mississippi Construction contractor

- Several dozen welders performing contract work under temporary visas signed a petition protesting their poor living conditions and irregular hours. The workers said recruiters promised free lodging, 40-hour weeks, and plenty of overtime pay, but that instead they were charged \$75 a week to live in storage buildings and never worked a full week. The worker who delivered the petition to the employer was threatened with deportation and then fired that day.

Were the employees engaged in protected concerted activity?

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### Answer

- The NLRB issued complaint and scheduled a trial, but before it began, the parties settled with the worker receiving \$13,000 in backpay.

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### Hartford, Connecticut Emergency medical response company

- After a verbal disagreement with her supervisor at work, an employee went home and posted a negative comment about her supervisor on her private Facebook page. Her post prompted replies from other employees who were friends with her on Facebook. The next day, the employer suspended and then ultimately fired the employee. In making the decision to fire her, the company relied, in part, on the employee's Facebook post, arguing that she had violated the company's internet policy when she criticized her supervisor online.
- A charge was filed with the NLRB Regional Office alleging that the employee was unlawfully fired and also alleged that parts of the company's handbook were unlawful because it prohibited employees from making negative comments about the company or supervisors.

Was the employee engaged in protected concerted activity?

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**Answer**

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- After an investigation, the NLRB issued a Complaint alleging that the employee was unlawfully fired because she engaged in protected concerted activity when she criticized her supervisor on Facebook. The Complaint also alleged that the company's handbook contained several unlawful provisions. Prior to a hearing, the company agreed to revise the provisions in the handbook which were alleged to be unlawful. The company also reached a private settlement with the employee regarding her termination.

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**Monterey, California  
Vegetable Packing Plant**

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- A storage and retrieval technician at a vegetable packing plant complained to managers and co-workers multiple times about what he said were unsafe conditions that endangered him and other employees. At one point, he called the county health department to report a potentially dangerous situation involving rusted ammonia pipes. Hours after the Health Department disclosed to the company the identity of the employee who made the complaint, he was suspended. Two days later, he was fired for allegedly leaving his work post and yelling at a supervisor.
- The employee filed a charge with the NLRB about his suspension and discharge.

Was the employee engaged in protected concerted activity?

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**Answer**

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- After an investigation, the Regional Director determined there was reasonable cause to believe that the employee was fired because of his stated concerns about employee safety, which was protected activity. The Regional Office issued a complaint and called for a hearing before an Administrative Law Judge, but the case settled before the hearing, with the employee receiving full backpay of about \$20,000 and reinstatement to his former job.

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**Resources**

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- Our website: [www.nlr.gov](http://www.nlr.gov)
- Contact the Information Officer at 1-866-667-NLRB.

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