

LEGAL UPDATES

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Hospital Access Rules Under Attack

In a 2-1 decision in *Sodexo America LLC*, the National Labor Relations Board (NLRB) held recently that the University of Southern California hospital violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a rule that limited off-duty employee access to the workplace, except for specific purposes.

The policy at issue provided that:

Off-duty employees are not allowed to enter or re-enter the interior of the hospital or any other work area outside the hospital except to visit a patient, receive medical treatment or to conduct hospital-related business.

An off-duty employee is defined as an employee who has completed his/her assigned shift.

Hospital-related business is defined as the pursuit of the employee's normal duties or duties as specifically directed by management.

Any employee who violates this policy will be subject to disciplinary action.

The NLRB applied the three-part test from its 1976 ruling in the seminal case on off-duty employee access, *Tri-County Medical Center*, to the "hospital-related business" exception of the policy and found that USC hospital's provision violated the National Labor Relations Act (NLRA). The three part test upholds policies that:

Limit access solely with respect to the interior of the facility and other working areas.

Are clearly disseminated to all employees.

Apply to off-duty employees seeking access to the facility for *any purpose* and not just to those engaging in union activities. (emphasis added)

In *Sodexo*, the NLRB held that the “hospital-related business” exception to the no access policy provides management with unfettered discretion to permit off-duty employees to enter the facility “as specifically directed by management.” Applying both *Tri-County* and a more recent case involving St. John’s Health Center (357 NLRB No. 170) to the hospital policy’s “hospital-related business” exception, the NLRB held it violated Section 8(a)(1) of the NLRA because it does not uniformly prohibit access to off-duty employees seeking entry to the property for any purpose. In other words, the NLRB held that the policy bans off-duty employees from the premises except for when management gives them the okay. Management reserving this level of discretion for itself was held to run afoul of the NLRA.

Interestingly, the majority decision also rejected the argument that the no-access policy’s exceptions for visiting patients or seeking medical treatment ran afoul of the NLRA. In doing so, the NLRB noted that the purpose for which the individuals seek access to the facility under those exceptions is as a member of the public, not as an employee, and access is granted or denied on the same basis and under the same procedures as for members of the public. This reasoning is consistent with prior NLRB precedent.

What This Means to You

When unions seek to represent your employees, they scrutinize your policies and procedures for possible deficiencies, especially under the NLRA. Given the NLRB’s current focus on rewriting the rules on workplace policies, now is a good time to review and revise your policies, as necessary. We provide such service to many of our client on a regular basis and know the common missteps than need to be avoided.

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