



A Three-part Action Plan: Preparing for Union Organizing Activity

As employers struggle to emerge from the pandemic and compete to attract and retain employees, they face a new challenge; namely, the prospect that employees may organize a union. Nine months into the NLRB's 2022 fiscal year, union election petitions are up 58% over the same period just one year before. Unions are winning over 70% of those elections across a broad spectrum of industries, including industries such as retail and food service that traditionally avoided such activities.

To maintain a culture of positive employee relations, time and attention should be devoted to three major objectives:

1. Enhance employee loyalty and engagement
2. Develop your employee relations "infrastructure"
3. Adapt to anticipated regulatory developments that may increase your vulnerability

ENHANCE EMPLOYEE LOYALTY AND ENGAGEMENT

1. **Reestablish management credibility.** Employee loyalty and engagement is built on a solid foundation of management credibility. Challenge your supervisors to apply positive employee relations principles every day. Make sure they are available, visible, accessible and responsive to preempt union promises of respect, dignity, fairness, etc.
2. **Enhance employee communications.** Specific steps should be taken to proactively expand your communication arsenal, including:
 - Establish regular meetings with employees – whether they are conducted one-on-one or in a group setting to solicit employee input, provide follow-up, and furnish operational updates.
 - Adopt a robust two-way communication strategy to maintain your credibility; generate awareness at the outset of organizing activity and bolster potential defenses to alleged unfair labor practices.
 - Leverage all available communication vehicles (HR one-on-ones, pre-shift, small group, departmental, plant-wide, skip-step, etc.).
 - Deploy contemporary communication tools such as electronic bulletin boards, flash surveys and closed-circuit video monitors.
 - Leverage social media platforms, websites and similar vehicles as appropriate.
3. **Ensure regular and effective interaction.** Senior and mid-level managers should be easily accessible to rank-and-file employees across all shifts.

4. **Make “fair” employment decisions.** Limit perceptions of unfairness by: (a) Treating employees with dignity and respect; (b) Consistently enforcing policies, rules and expectations; (c) Giving sufficient notice of deficiencies; (d) Investigating before acting; (e) Considering (but not promising) progressive discipline; (f) Providing advance notice of changes; and (g) Exploring peer review and other internal “appeal” procedures.
5. **Develop participatory programs to enhance engagement.** Involve employees in decisions that affect them and consider their input. Utilize lawful employee committees (e.g., safety, social, recognition, community involvement, etc.) where practical.
6. **Recognize employee needs.** Employees want to be recognized and valued as individuals, and it’s important to develop programs to meet those needs. Among other things, consider plant-wide, departmental and/or shift recognition events, along with those involving families and the surrounding community.
7. **Identify, address and resolve concerns.** It may be impossible to make everyone happy, but you can take steps to ensure that employees do not feel ignored. Publish step-by-step procedures to address grievance resolution and problem-solving needs, with bypass provisions to timely address workplace safety, EEO, harassment and retaliation claims. Take employee concerns seriously and build internal accountability into the system.

Develop Your Employee Relations “Infrastructure”

1. **Update policies and procedures.** With recent administrative changes, expect the National Labor Relations Board (NLRB) and other agencies to renew their enhanced scrutiny over rules regulating workplace conduct. As a result, you may soon need to update policies regulating harassment, solicitation, distribution, property access, social media, workplace recordings and investigation, electronic communications, uniforms, class waivers and related issues.
2. **Maintain a competitive economic package.** Continually strive to maintain a package that is competitive relative to area and industry standards by: (1) Complying with all wage payment laws; (2) Explaining pay plans in clear terms; (3) Promoting the “hidden value” of your benefits package; and (4) Promptly resolving wage payment issues.
3. **Attract and retain a quality and diverse workforce.** As you struggle to maintain full staffing levels, it is important to attract and retain a diverse workforce which can bring different voices and perspectives to your workplace.
4. **Make safety a priority.** Preempt any attempt to exploit workplace safety concerns by underscoring your commitment to a safe and hygienic workplace. Reinforce those efforts by soliciting input to continuously improve protocols. Demonstrate your commitment by: (a) Increasing visibility of internal resources accountable for spearheading safety efforts; (b) Regularly training employees; (c) Rewarding safe work practices; and (d) Imposing discipline for unsafe practices.
5. **Educate employees on your business model.** Utilize comprehensive messaging programs to educate employees on the opportunities and challenges confronting your business. Employees who understand the economic challenges will be better positioned to discern outside promises that “sound too good to be true.”
6. **Adapt your employee relations program to the latest developments.** Ongoing safety and job security concerns are inevitable. These issues are likely to converge with pay, benefits, consistency, fairness, and other concerns associated with workplace unrest. Successful employers will remain vigilant in systematically identifying employee concerns through pulse surveys, focus groups, 360 assessments and related tools.
7. **Build your image within the surrounding community.** Foster pride and identity within your organization, thereby reducing the tendency to identify with others outside of it. Look for early opportunities to engage in team-building, while fostering relationships with local political, philanthropic, and civil rights leaders.
8. **Retain a media/public relations expert.** Before a crisis erupts, get ahead of the curve to develop a strong relationship with a media/PR expert. Educate them about your business so they are standing on go when the unexpected occurs.

Adapt To Anticipated Legal Developments That May Increase Your Vulnerability

- 1. Assess your organizing vulnerability.** Identify and resolve all sources of lingering workplace anxiety. Consider conducting a comprehensive “vulnerability audit.”
- 2. Anticipate outside “sales pitches” and develop strategies for pre-empting them.** Conduct a self-critical analysis and identify issues that could be used to drive a wedge between management and the workforce. Develop policies, programs, systems and messages to inoculate against them.
- 3. Identify your “supervisors” under current NLRB doctrine.** Front-line supervisors are critical to the employee relations success of any organization. Act now to properly identify them and as needed, modify their scope of authority to support your position.
- 4. Strategically evaluate other “bargaining unit” issues.** Analyze other potential bargaining unit issues that may arise, given the unique aspects of your workplace. For example, are your operations vulnerable to “micro-unit” organizing? Do you have viable multi-location, functional integration, joint employer, or independent contractor issues? Act now to develop arguments bolstering your position.
- 5. Train supervisors to effectively articulate your employee relations philosophy.** Supervisors are your first line of defense (or your first line of exposure). Whether your management team is trained in person or otherwise, they should be conversant on: (a) The reasons why the employer prefers to operate as a union-free organization; (b) Their status as legal agents; (c) Employer “free speech” rights and how to lawfully exercise them; (d) How to recognize the early warning signs of organizing activity; and (f) What they may lawfully do in response.
- 6. Orient new employees on your employee-relations philosophy.** As you orient new employees, make sure your on-boarding process lawfully and effectively explains the factors driving your employee relations philosophy.
- 7. Explain your position on third-party representation.** Periodically educate employees about unions, the risks associated with collective bargaining, and the benefits of working directly with management. Review and update your employee relations policy statement.
- 8. Establish a “Rapid Response Team.”** Train your most effective and credible supervisory communicators on: (a) Lawfully engaging on issues that resonate with employees; (b) Anticipating and responding to common organizing tactics; and (c) Articulating the benefits of working directly with the management team.
- 9. Prepare tailored and comprehensive educational content.** Lawful and effective communications call for a great deal of integration with existing cultural themes. Evaluate their tone, content and delivery approach well in advance of distribution.
- 10. Plan for logistical arrangements.** Anticipate how, where and when you will communicate with employees. Formalize logistical arrangements to ensure that communications are widely distributed. Don’t shy away from critical questions, such as: (a) Do you have secured bulletin boards in place?; (b) Do you have an established intranet portal?; (c) Do employees have access to computers and electronic communications systems?; (d) Do you have the means to send letters to employee homes?; and (e) Can you leverage available technology to enhance employee communications?
- 11. Develop plans to prepare for mail ballot elections.** From the onset of the pandemic, the NLRB has been relying extensively on mail-in representation elections, and that trend is regrettably expected to continue. During the pandemic, voter turnout has been hovering around 40%, so education opportunities must be prioritized and voter turnout is critical.
- 12. Conduct comprehensive security audits.** Assess the security of parking lots, buildings, rest and break rooms, and other physical premises. Consider fencing, enhanced lighting, video surveillance and access-control systems to properly regulate movement. Establish appropriate signage to lawfully prohibit trespassing and unwanted solicitation. Audit your electronic communications and other systems to protect intellectual property and confidential information.

- 13. Monitor developments outside of your organization.** Lawfully monitor employee relations developments that are relevant to your business, area and industry. Stay updated and informed about trends that may affect your workplace culture by cultivating relationships with area and industry Human Resources professionals, security consultants, neighbors, local law enforcement officials, etc.
- 14. Think outside the box when it comes to closing communications gaps.** Employers that embrace the challenges by leveraging interactive video, intranet, web-based platforms, etc., are far more likely to weather communication challenges.

Conclusion

Change has arrived in the world of labor relations. Those employers who get ahead of the curve by planning for and improving their existing labor relations models will be better positioned to withstand any potential organizing activity. No single “off-the-shelf” action plan can prepare you for these developments. Every organization must analyze its own workforce, industry, resources, and other unique factors before tailoring a sustainable plan.

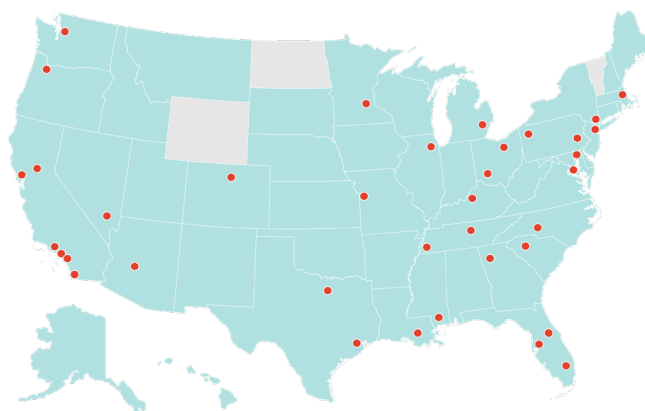
Your labor relations attorneys at Fisher Phillips are constantly monitoring and evaluating these developments, and we are ready to work with you to tailor a strategic plan that fits the unique aspects of your corporate culture on a privileged basis.

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