

Employees May Not Have to Keep Quiet About Investigations

News

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Steve Bernstein was quoted in *Corporate Counsel* on August 13, 2015. The article “Employees May Not Have to Keep Quiet About Investigations” examined a recent T-Mobile US Inc. case in which the National Labor Relations Board (NLRB) dismantled a confidentiality policy on the grounds that although the policy was intended to keep investigations private, it had the effect of chilling employees’ rights to discuss the terms and conditions of their employment.

Steve weighed in on the case.

He told CorpCounsel.com he has some big doubts as to whether the language is really so hard for an employee to understand. Regardless, he said, the current board has gotten less and less accepting of disclaimers. “We’re now at a point where we’ve got to advise our clients in the same breath that while a disclaimer may be appropriate, no matter how well it is worded, it’s of limited value,” he said.

According to Steve, the T-Mobile case fits into a continuing line of employee handbook policy cases from the NLRB that many businesses believe have muddled the waters around rules and regulations in the workplace, creating legal confusion and growing liability rather than simplifying and improving the situation.

“I have a number of clients who are starting to ask: ‘Why should I have a handbook at all? Why should I have signed an acknowledgment form [for investigations] at all, if they are going to be used against me?’” Steve said. “It’s a fair question.”

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