

## Q&A: WHAT EMPLOYERS NEED TO KNOW ABOUT “FIGHT FOR 15”

News

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Martin Thompson was interviewed by *Memphis Business Journal* on November 10, 2015. In the article “Q&A: What Employers Need to Know About “Fight For 15”” Martin answers questions to help employers understand how to handle strikes, enlight of the “Fight for \$15” movement strikes.

### **Memphis Business Journal: How can employers prepare for walkouts?**

Martin Thompson: First, companies should understand that “Fight for \$15” is set nationally for Tuesday, Nov. 10, at no certain time. This movement had a prior event in April 2014 when several thousand workers protested. This is another protest to raise the minimum wage to \$15/hour and is being promoted by unions as an organizing tool and to show that unions support all workers who earn under \$15. Employees are being urged to protest wages under \$15/hour by walking off the job, picketing/handbilling, setting up banners, etc., at any business that pays less than \$15/hour, not just restaurants or fast-food businesses.

Second, employers should consult their labor counsel — not just the employment counsel — because walkouts, picketing and work stoppages are types of protests that, in most instances, are protected by the federal labor law known as the National Labor Relations Act (NLRA). Knowing what conduct is and is not protected will help resolve the situation without unnecessary disruptions or unwanted legal actions.

### **Legally, what actions can employers take?**

Under the NLRA, all workers who engage in lawful concerted activity for mutual aid and protection are within the

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protection of the NLRA. No adverse action for lawful concerted activity should be taken against any protected employee, whether the company is unionized or not. If it is unionized, check your collective bargaining agreement for employee obligations with respect to protest activities. The no-strike or no-picket language may impact their permitted conduct.

If not unionized, employers have to allow employees to protest lawfully. If workers start to walk off the job, ask where they are going or whether they are leaving their job despite being scheduled to work. If they say they are protesting, companies can require them to leave the premises to conduct their protest; employees cannot stand at their work areas and refuse to perform their work. If workers refuse to leave, companies may call for law enforcement but should never discipline the protesters for protesting.

One limitation to these protests is that employees cannot cause frequent work stoppages without risking the loss of the NLRA protection. One-time protests are usually protected, but frequent protests may be considered unprotected. If employees are picketing outside a business, the business can enforce its property rights to prevent illegal trespass by third parties or employees not working. Again, law enforcement may be needed to enforce this property right and no adverse employment action should be taken without advice of counsel.

**What are some tips on ways employers and employees can work together to find common ground regarding the 'Fight For \$15' movement?**

If employees want to protest, it's an excellent indication that such companies need to open a dialogue with their employees about their wages and possibly other terms and conditions of employment. From these discussions, management should learn how to approach this and any other needful topics so employees will know they are being heard and, where possible, their concerns will be addressed adequately.

**Anything to add?**

Employers should not spy on their protesting employees in public spaces, so don't photograph or video them or jot down names or license plates. If there are postings on social media about the workplace or poor wage levels, do not rush to discipline. Instead, seek legal advice first.

If protesters are acting illegally by trespassing on company premises, disrupting customer service, blocking entrances or interfering with employees' right to work, politely ask such employees to leave or stop such conduct and explain why. Do not raise your voice or engage physically. If no compliance is forthcoming, tell them you will call the local police to address the situation.

Do not discipline without advice of counsel.

To read the full article, please visit the [Memphis Business Journal](#).