The Unexpected Class Of 2016? Groundbreaking Labor Board Decision Creates New Class Of Supervisors

Insights
10.03.16

Recently, in a high-profile decision involving Columbia University, the National Labor Relations Board (NLRB) determined that private college and university graduate and undergraduate student assistants – that is, students who perform work, at the direction of the university, for which they are compensated – can be "statutory employees" under the National Labor Relations Act (NLRA). This includes student assistants engaged in research funded by external grants as well as students receiving stipends.

As administrators sort through the institutional implications, there is at least one unintended consequence of this decision with which colleges and universities must immediately grapple: a whole host of employees who were not traditionally considered managers may now be considered "supervisors" for purposes of the NLRA. This means that their actions can potentially constitute institutional unfair labor practices.

Who Are NLRA Supervisors?
Under the NLRA's statutory definition, a "supervisor" includes "any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

While each school will have to conduct its own fact-specific analysis to make this determination, it is entirely possible that certain unexpected employees may be deemed supervisors given this broad definition. For instance, faculty members, including non-tenured faculty, may now be considered NLRA statutory supervisors of student assistants.

What Does It Mean To Be A Supervisor?
Identifying the new class of supervisors and ensuring they understand the rights of student assistants under the NLRA, as well as the limits on the nature of their interactions with student assistants, is important to ensure your institution does not inadvertently commit unfair labor practices.

More specifically, your new supervisors need to understand that student assistants are permitted to act together by protest, meeting, emails, or otherwise to improve pay, hours, safety, workload, or other terms of employment – this is called "protected concerted activity." Student assistants cannot be disciplined in any way for such actions or their involvement in protected concerted activity.

In addition, all identified statutory supervisors should be trained on what they can and cannot say or do with student assistants. For this endeavor, "TIPS" training is essential. You should train your supervisors to avoid the following with respect to protected concerted activity:

T - Threats – Do not threaten student assistants from participating in protected concerted activities.

I - Interrogation – Do not ask questions or debate student assistants about their protected concerted activities.

P - Promises – Do not promise benefits to student assistants if they avoid protected concerted activities.

S - Surveillance – Do not spy on, photograph, or videotape student assistants as they exercise their rights to engage in protected concerted activities; also, do not join non-public websites, blogs, or social media pages related to union activities.

Conclusion

There are many issues for colleges and universities to consider in the wake of the groundbreaking *Columbia University* decision. For example, you may also need to explore the impact the decision may have on student codes of conduct, and the extent to which the decision may cover those in student organizations. However, given the serious repercussions of NLRA noncompliance, identifying and training new student assistant supervisors so that they do not inadvertently commit unfair labor practices is an excellent initial step.

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