



NLRB's Latest Guidance Supports Employer Decisions Amidst Pandemic

Insights

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Addressing the issue for the first time since the pandemic, the National Labor Relations Board recently released a series of advice memoranda instructing its Regional offices to dismiss various COVID-19 related charges against employers. The agency dismissed all of the underlying charges, further demonstrating its recent tendency to extend a degree of latitude to employers confronting virus-related challenges. Within these five August 13 memoranda, the Board concluded:

- An employer is not obligated to engage in **midterm bargaining** regarding Union proposals for paid sick leave and hazard pay because of the ongoing pandemic.
- Without **independent evidence of retaliatory animus**, an employee cannot link an adverse employment action to complaints over COVID-19-related safety measures (or lack thereof) in a safety meeting on behalf of others, despite the fact that they could otherwise be considered protected concerted activity.
- Expression of individualized concerns over COVID-19 safety measures do not rise to the level of **protected concerted activity**.
- In the absence of an explanation as to relevance, an employer may refuse **to furnish the union with information** requested in connection with a pending grievance over COVID-related lay-offs without violating its obligation to bargain in good faith.
- An employer need not turn its **financial records** over to the union in the context of a temporary closure unless it asserts that the move was driven by a lack of assets.
- An employer is not operating under a **mandatory duty to bargain** over a decision (as opposed to the effects of that decision) to close temporarily due to significant business downturn caused by the pandemic.
- To the extent that they are an “**inevitable consequence**” of the decision to temporarily close because of the pandemic as set forth above, an employer is not obligated to bargain over the effects of that decision either.

Back on March 27, the NLRB’s General Counsel issued a memorandum summarizing case authority upholding an employer’s right to unilaterally implement operational changes against the backdrop of “compelling economic exigencies.” This latest quintet of NLRB Advice Memoranda marks another step in the direction of increased latitude for unionized employers confronting the unique business

challenges brought about by COVID-19 and may offer welcome relief to non-union employers as well.

Employers are encouraged to continue monitoring COVID-19 developments emanating from this agency over the weeks and months to come, and to consult with their Fisher Phillips counsel or any member of the firm's Labor Relations Group for insights into the implications on their own operations in the meantime. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors, or any attorney in our [Labor Relations Practice Group](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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