Insights, News & Events

WILL YOUR WORKERS WALK OUT ON MAY 1? EMPLOYERS' GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES DURING PROTEST ACTIVITY

Insights
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Will Your Workers Walk Out on May 1? Employers' Guide to Your Rights and Responsibilities During Protest Activity

A coalition of activist and labor groups is calling for a nationwide "no work, no school, no shopping" action on May 1 (International Workers' Day) framed by some organizers as a general strike. Whether it reaches that scale remains to be seen. What employers need to know right now, however, is that you have certain rights and responsibilities when it comes to potential protest-related work stoppages, and these obligations turn on some nuances that you should be familiar with. Here is what you should know before May Day arrives, whether or not your workplace is unionized.

What is Actually Being Planned?

The "May Day Strong" coalition is urging workers, students, and community members to stay home from work, avoid school, and boycott shopping on May 1. Organizers are explicitly framing the action as a response to the current administration's policies. Tactically, the call ranges from full-day walkouts at places of employment to symbolic absences and consumer boycotts, meaning participation could look very different across workplaces and industries.

At this point, the call is largely coming from activist networks, student and higher-ed groups, and some unions and community organizations. It is not yet a formally coordinated, nationally sanctioned general strike by the big

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labor federations in the classic sense. However, momentum can gather quickly as May Day approaches, so it makes sense to spend the month of April preparing for potential walkout activity. The first step is understanding the key critical nuances at play.

The Critical Question: Protected or Unprotected Activity?

The National Labor Relations Act (NLRA) protects employees' rights to engage in "concerted activity" for their "mutual aid or protection," whether or not they are members of a union. This includes the right to strike.

But not all walkouts are protected, and the purpose of the action is the threshold question. Here is the general legal framework:

- **Purely political walkouts are likely unprotected.** If employees walk off the job solely to protest government policy, oppose an administration's actions, or make a broader political statement unconnected to their own workplace conditions or those of their co-workers, that activity likely falls outside the NLRA's protection. In those circumstances, employers may typically treat the absence as unexcused and apply their normal attendance and discipline policies.
- **Walkouts tied to workplace conditions may be protected.** If a walkout even indirectly connects to employees' terms and conditions of employment (like wages, safety, hours, working conditions), it could qualify as protected concerted activity. An employee who walks out claiming May Day is about workplace inequality or worker treatment generally could attempt to draw that connection. Courts and the NLRB have sometimes read this link broadly.
- **The line is fact-specific and not always clear.** The more organizers frame this as a worker-conditions issue (and many May Day messaging does use "workers over billionaires" language), the blurrier the line becomes. Employers should not assume the political nature of the event automatically resolves the legal question.

What This Means for Non-Union Employers

Non-union employers sometimes assume the NLRA doesn't apply to them. It does. The NLRA protects concerted activity

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for virtually all private sector employees regardless of union status. If two or more of your employees walk out together in connection with shared workplace concerns, that coordination alone may trigger protection.

That said, non-union employers generally have some flexibility when the walkout is clearly political in nature with no workplace nexus. If employees call out sick or simply don't show, you may apply your attendance policies without regard to why they are absent – provided, of course, you apply those policies consistently and don't single out employees based on perceived union or protected activity.

Practical steps for non-union employers

- Review your attendance and call-out policies now and make sure they are clear, current, and consistently enforced.
- Do not ask employees whether they plan to participate in May Day activity. That inquiry could itself be viewed as coercive.
- If employees ask you or your management team whether their activities are protected by law, consider advising them that as set forth above, all such issues are fact-sensitive depending on context, without elaborating any further.
- If you become aware of employees discussing participation with each other (not just as individuals), treat that as a potential concerted activity flag.
- Document any disciplinary decisions carefully, tying them to the policy violation rather than the employees' political views.

What This Means for Unionized Employers

For employers with a collective bargaining agreement, your first stop is the contract. Many CBAs include no-strike clauses that prohibit work stoppages (including sympathy strikes and politically motivated walkouts) during the contract term. If your agreement has such a clause, a coordinated May Day walkout would likely constitute a contract violation for which you have legal recourse,

potentially including discipline or discharge, as well as injunctive relief.

A few additional considerations for unionized workplaces:

- **No-strike clauses generally hold, with an important exception.** Even a valid no-strike clause may not bar a walkout if employees are protesting an employer's own unfair labor practices (ULPs) or otherwise honoring a picket line. Be mindful that any management missteps in the run-up to May 1 (unlawful threats, surveillance, coercive questioning) could complicate your ability to enforce the clause.
- **Intermittent strikes are generally prohibited.** A one-day walkout, particularly if it follows other sporadic work stoppages over similar issues, may be characterized as an "intermittent strike" – a series of short strikes designed to maximize pressure on an employer while minimizing workers' exposure to permanent replacement. Courts and the NLRB have long held that such strikes are typically unprotected by the NLRA because of the instability they create.
- **Check for contractual notice requirements.** Many agreements require advance notice before a work stoppage or specify procedures for authorized strikes. Failure by the union to follow those procedures strengthens your position.
- **Replacement workers remain an option.** Employers facing a strike may lawfully hire temporary or (in some circumstances) permanent replacement workers, though the reinstatement rights of striking employees differ depending on whether the strike is classified as economic or ULP-based.

Practical steps for unionized employers

- Pull your CBA and review your no-strike clause now. Know exactly what it covers, what it excludes, and what remedies it provides before you need to invoke it.
- Identify your contractual notice and procedure requirements. If the union fails to follow them, document that failure contemporaneously.

- Develop a replacement worker contingency plan. Know in advance whether you plan to pursue temporary or permanent replacements, and what your hiring timeline would need to be.
- Assess your ULP exposure. Review any recent management actions that could be characterized as unlawful (discipline, policy changes, supervisor conduct) that the union might use to justify a walkout or undermine a no-strike clause defense.

What Employers Should Not Do

Regardless of where your employees stand on the May Day event, certain employer responses carry significant legal risk:

- **Do not threaten employees** for discussing or planning to participate in a walkout. Even if the walkout itself would be unprotected, threatening employees in advance may constitute an independent NLRA violation.
- **Do not surveil or interrogate employees** about their protest plans. Asking employees whether they plan to participate, or directing supervisors to monitor discussions, can cross legal lines.
- **Do not discipline selectively.** If you apply your attendance policy on May 1 based upon a conclusion that such activity is not legal protected, apply it to everyone who is absent, regardless of the reason for the absence. Inconsistent enforcement invites discrimination claims.
- **Do not overreact publicly.** Blanket statements warning employees against participation can create legal exposure even when the underlying action would have been unprotected.

Your Action Plan for the Next Month

With May 1 approaching, here is what employers should be doing now:

- **Assess your workforce.** Are there groups, departments, or locations where participation is likely? What operational impact could that have?

- **Review and reaffirm your attendance policy.** Make sure it is clearly communicated and consistently applied. If it hasn't been updated recently, now is the time.
- **Prepare a contingency plan.** Identify coverage options, cross-training needs, and customer or client communication strategies in the event of significant absences.
- **Brief your supervisors.** Managers need to know what they can and cannot say or do in the coming weeks. Train them now.
- **Contact your Fisher Phillips attorney.** The intersection of political protest and labor law is rarely straightforward. The facts of each situation matter, and the cost of a misstep – legally or reputationally – can significantly outweigh the cost of a consultation.

Conclusion

May Day 2026 may or may not amount to a true general strike. But the legal questions it raises for employers are real and present. The authors of this Insight and the members of FP's Labor Relations team are available to help you navigate them. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on these issues.