

NLRB'S CONFIDENTIALITY SHIFT MAY HINDER WORKPLACE PROBES

News

Jan 4, 2013

Jim Walters, a senior partner in the Atlanta office, provided commentary in the January 4 *Law360* article "NLRB's Confidentiality Shift May Hinder Workplace Probes." A recent ruling by the National Labor Relations Board (NLRB) struck down a 34-year old rule that shielded companies from having to give unions witness statements used in internal investigations. The old rule meant that companies could offer to keep witness statements confidential as a means of getting employees to cooperate with investigations and protecting them from harassment. The board replaced that rule with a balancing test that weighs a union's need for information against the employer's confidentiality interests. Jim said that some employers are still going to feel the need to make and stand by confidentiality assurances in order to secure workers' help when looking into on-the-job misconduct, which sets up a potential "explosion" in NLRB charges brought by unions against companies seeking to keep statements under wraps. "It's safe to say that in every arbitration involving union member discipline from now on, employers are going to get a request for witness statements. Then the employer has to make a hard decision as to whether they can win the balancing test."