



Allison Hawkins Details Biden Administration's Expansion of Concerted Activity for HR.com

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Employers are subject to an increasing risk of running afoul of the expanding list of employee activities protected by the National Labor Relations Act (Act) under the newly Democratic majority, five-member National Labor Relations Board (NLRB), which Allison Hawkins detailed in an article published in the June 2023 issue of HR.com's HR Legal & Compliance Excellence.

The NLRB and its General Counsel Jennifer Abruzzo, appointed by President Biden, have made clear their intent to seek and adopt an expansive view of the NLRA's protections on types of worker's "concerted activity," which are actions taken by employees to address the terms and working conditions of their employment. While the Trump administration narrowly construed concerted activity as applying to conduct directly related to the worksite, the Biden administration's NLRB has construed concerted activity more broadly.

Some examples of expanded protections Hawkins detailed include:

- Employers cannot prevent employees from displaying union insignia or wearing union apparel unless they can prove "special circumstances" justifying the restriction;
- Ruling in 2020 establishes precedent that employees who engage in inappropriate workplace conduct or discriminatory speech may be protected if such conduct is related to union activity or other Section 7 concerted activity;
- Employee discussions about quality of supervision, even when done online or communicated via memes and emojis, can be construed as inherently concerted activities;

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- Potential NLRA violations for terminating employees that protest customer relationships; and,
- Social movements and attire reflecting them are also being asserted as concerted activity by the NLRB, though a ruling has not yet been made.

For the full article, please [click here](#).