

NLRB (National Labor Relations Board) Decision Limits Employer's Off-Duty Policy, Part II



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Wednesday, June 11, 2014

Earlier this week, we provided information relative to the NLRB's decision in ***Piedmont Gardens***, 360 NLRB No. 100 (2014). The issue in the case was the employer's ability to regulate off-duty employee access to the property, a nursing home. The company handbook contained a provision that generally prohibited off-duty access, unless such access was previously authorized by a supervisor. The NLRB found the "unless previously authorized" caveat to be unlawful because it gave supervisors an unlimited scope in determining when and why employees could access the building.

What is especially interesting about this case is that *Piedmont Gardens* argued its access policy was lawful because, although the company handbook may have used broad "unless previously authorized" language, *in practice*, employees were only permitted to enter the nursing home while off-duty for three specific reasons: to pick up a paycheck, attend a scheduled meeting with human resource representatives, or to arrive early for the night shift. The NLRB found the argument unconvincing because the employer could not show that those were the *only* circumstances in which employees were allowed to enter the building. The Board declined to rule whether the nursing home's policy would be unlawful if it clearly stated the three reasons for which employees would be granted off-duty access.

The *Piedmont Gardens* case highlights an important reminder for employers: a handbook should reflect the realities of real-world procedures. While *Piedmont Gardens* had established specific circumstances in which employees could access

the facility, the handbook language did not outline these and instead relied on an overly-broad provision that was in violation of the National Labor Relations Act. Too often, what is stated in a company handbook does not reflect the employer's day-to-day practices. In litigation, both written policies and employer/employee testimony will be used. Employers must ensure their policies are lawful and, further, that they are implanted accordingly.

Off-duty access policies should be broad enough to cover the employer's concerns, but not so broad that they restrict employees' Section 7 rights. In addition, all policies must be disseminated, applied, and enforced even-handedly. If you are an employer and need help crafting an off-duty policy, contact a labor and employment law attorney today.

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