



THE REASONABLE EMPLOYEE STRIKES AGAIN: NLRB FINDS EMPLOYER CONFIDENTIALITY AND NO-LOITERING POLICIES UNLAWFUL

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Does your Company have a policy that limits employees from disclosing information about their wages and benefits to people outside of the Company? How about a policy that prohibits employees from loitering on Company property after work hours? Both policies might be unlawful under two cases recently issued by the National Labor Relations Board.

In *The NLS Group*, the Board overruled the administrative law judge's decision and held that the Employer, a temporary employment agency, violated the National Labor Relations Act by maintaining the following confidentiality provision in its employment agreements:

Employee also understands that the terms of this employment, including compensation, are confidential to Employee and the NLS Group. Disclosure of these terms to other parties may constitute grounds for dismissal.

The ALJ had found the confidentiality provision to be lawful, reasoning that the Employer's interest in maintaining the confidentiality of its compensation information outweighed its employees' Section 7 rights to discuss that information with third parties. On review, however, the

Board rejected the ALJ's balancing test (which had been applied by the Board in past cases) and held that the confidentiality provision was unlawful because employees would reasonably understand it to prohibit discussions of their terms and conditions of employment with union representatives, an activity protected by the Act.

Similarly, in *Tecumseh Packaging Solutions, Inc.*, the Board reversed another ALJ's decision. The ALJ had concluded that the Employer's rule prohibiting employees from loitering on Company property after hours did not violate the Act, because "an employer should have a right to prohibit loitering on company property." The Board disagreed and held that the Employer violated the Act by maintaining the rule, concluding that employees could reasonably interpret the rule as prohibiting them from remaining on Company property after their shifts to engage in activities protected by the Act.

Make Your Policies Safe from the Reasonable Employee

Employers should re-evaluate their policies to make sure they are safe from the reasonable employee. While your Company may have a legitimate interest in limiting



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the disclosure of information about its wages and benefits to third parties and/or in protecting its property from loitering, if your policies are too broad the Board will simply find them to be unlawful, no matter the justification.

In addition, if an employee is disciplined or terminated for violating a policy that the Board later finds unlawful, that discipline or termination will also be unlawful. Discipline would have to be revoked and a terminated employee would have to be offered reinstatement and back pay.