

NLRA

- National Labor Relations Act, 29 U.S.C. § 157
 - Guarantees an employee's right to share information with co-workers.
 - “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to **engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .**”

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- The NLRA's remedial purpose is in 29 U.S.C. § 151:
 - The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions . . .

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- The NLRA's prohibited practices are in 29 U.S.C. § 158(a):
 - It shall be an unfair labor practice (ULP) for an employer
 - (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;
 - (3) by discrimination . . . to encourage or discourage membership in any labor organization:

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- Even if a rule does not explicitly prohibit Section 7 activity, however, it will still be found unlawful if
 - 1) employees would reasonably construe the rule's language to prohibit Section 7 activity;
 - 2) the rule was promulgated in response to union or other Section 7 activity; or
 - 3) the rule was actually applied to restrict the exercise of Section 7 rights.

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- Employees have a Section 7 right to discuss wages, hours, and other terms and conditions of employment with fellow employees, as well as with nonemployees, such as union representatives.
- Thus, an employer's confidentiality policy that either specifically prohibits employee discussions of terms and conditions of employment—such as wages, hours, or workplace complaints—or that employees would reasonably understand to prohibit such discussions, violates the Act.
- Similarly, a confidentiality rule that broadly encompasses "employee" or "personnel" information, without further clarification, will reasonably be construed by employees to restrict Section 7-protected communications. See Flamingo-Hilton Laughlin, 330 NLRB 287, 288 n.3, 291-92 (1999).

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- Examples of unlawful policies:
 - Do not discuss "customer or employee information" outside of work, including "phone numbers [and] addresses."
 - "You must not disclose proprietary or confidential information about [the Employer, or] other associates (if the proprietary or confidential information relating to [the Employer's] associates was obtained in violation of law or lawful Company policy)."

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- Examples of unlawful policies:
 - “Never publish or disclose [the Employer's] or another's confidential or other proprietary information.”
 - “Never publish or report on conversations that are meant to be private or internal to [the Employer].”
 - Prohibiting employees from “[d]isclosing ... details about the [Employer].”
 - “Sharing of [overheard conversations at the work site] with your coworkers, the public, or anyone outside is strictly prohibited.”

NLRA: Enforcement

- Statute of limitations for NLRB charges against employers is 6 months.
- NLRB staff like to help workers draft their charges, so allow additional time for this.
- NLRB has staff attorneys who will present cases to the ALJ.
- Workers have a right to their own attorney, but do not need to have an attorney.
- Normally, no attorney's fees are awarded.
- www.nlr.gov
- Enforcement is political