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Policies Limiting Workplace Gossip May Violate the NLRA

Workplace related gossip can be damaging to company morale, productivity and reputation. Understandably, some employers adopt a "no gossip" policy with the intention of avoiding damage to their employees and their businesses. Unfortunately, in both union and non-union workplaces, a "no gossip" policy can run afoul of the National Labor Relations Act. Even when acting with the best of intentions, employers must be careful not to inadvertently violate the law when both drafting and implementing no gossip policies.

In Laurus Technical Institute, a case before the National Labor Relations Board ("NLRB"), the employer created, implemented and later enforced a "no gossip" policy. The company's CEO created the policy a few days after reprimanding an employee for sharing work complaints with a manager who was not in her chain of command. The CEO specifically told the employee that she would be terminated if anyone in the company approached him and told him that she had shared her personal issues or workplace complaints. The violation of the enacted no gossip policy was later cited as one of the reasons for her termination.

The policy that this company added to its personnel handbook defined gossip as "an activity that can drain, corrupt, distract and down-shift the company's productivity, morale and overall satisfaction. It has the potential to destroy an individual and is counterproductive to an organization." The handbook also stated that anyone who participated in or instigated gossip about the company, an employee or a customer would be subject to disciplinary action.

NLRB Administrative Law Judge Dawson ruled that the policy would prohibit protected employee activity. She found the policy was "overly broad, ambiguous, and severely restricts employees from discussing or complaining about any terms and conditions of employment." Judge Dawson also overturned the dismissal of the employee.

The ALJ held that such a broad "No Gossip" policy violates the National Labor Relations Act because it prohibits employees from speaking to coworkers about discipline and other terms and conditions of employment. In Judge Dawson's decision, she contrasts the employer's "no gossip" policy with policies prohibiting "injurious, offensive, threatening, intimidating, coercing" conduct by employees, which the National Labor Relations Board had previously upheld as lawful. Judge Dawson's reading of the case law suggests that the policy here was overreaching and that "read literally, this rule would preclude both negative and positive comments about a

person's personal or professional life unless that person and/or his/her supervisor are present."

We bring this decision to your attention because inadvertent word choices and even small drafting errors can expose employers to liability. Policies that impact or regulate workplace related issues that may be of common interest to employees are particularly vulnerable to review. For example, more commonplace "confidentiality" policies may also have implications for employee rights under the NLRB. Before you try to set limitations on the conversational habits of your employees and inadvertently expose yourself to liability for interfering with protected concerted activity, let us help you avoid the issue in the first place. Often the solution involves merely changing a word or two.

For assistance in drafting policies, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com).