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# EMPLOYMENT LAW UPDATE-

# NATIONAL STRIKE AWARENESS AND EMPLOYER CONCERNS

February 14, 2017

Employers may experience high absence rates this upcoming Friday February 17, 2017, because a national "General Strike Against Trump" is being arranged by a grassroots movement called "Strike4Democracy." The strike (the first in a proposed series, the next of which is set for March 8) encourages individuals to participate in myriad methods, one of which is to miss work. Employers whose employees miss work to participate in this, or any other, "strike" should analyze the particular circumstances surrounding the absence before disciplining an employee. Otherwise, the employer may face an unfair labor practice charge.

The National Labor Relations Act ("NLRA") gives employees the right to engage in concerted activities for the purpose of their "mutual aid or protection." The NLRA also makes it unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of those rights. Therefore, whether employees have a legally protected right to miss work for political advocacy depends on the circumstances.

The National Labor Relations Board ("NLRB"), which enforces the NLRA, has set forth a two-part test to determine if the absence is protected. First, the NLRB determines whether there is a direct nexus between the specific issue that is the subject of the advocacy and a specifically identified employment concern of the participating employees. Strike4Democracy has stated the February 17 strikes will be locally organized, and it has stated "Each strike should have a clear goal." If, for example, a local strike is organized around the idea of increasing the minimum wage (such as the Fight for $15 strikes in the past), this strike would likely establish a direct nexus to an identified employment concern. If, however, the local strike centered on requesting President Trump to release his tax records (which is a topic of grievance listed on the Strike4Democracy website), such a strike would likely not satisfy this test.

Second, the NLRB determines whether the means employed to carry out the advocacy is protected. To reach this determination, the NLRB focuses on whether the employer in question has the ability to address the underlying grievance. For example, a strike aimed at increasing minimum wages (such as the Fight for $15 strike) likely satisfies this test because an employer has the ability to raise the minimum wage of its employees. Other situations may not be so clear. For instance, if an employee participates in a local strike urging the current administration not to repeal the Affordable Care Act (another topic of grievance identified by Strike4Democracy) that strike may not satisfy the second test because an employer cannot change the law. But arguably, if the strike actually focused generally on healthcare protections afforded to employees and not the status of the law, such an issue is one an employer may in fact be able to address. Therefore, as you can see, it is important to truly analyze the particular circumstances surrounding the absence before deciding what, if any, action to take against an employee.

If you have any questions about the proper steps to take against an employee who has missed work to engage in "political advocacy", or if you need any other assistance in labor or employment law, please contact:


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