

EMPLOYERS BEWARE: CLAIMS INCREASING FROM “CONCERTED ACTIVITY”

By *Richard L. Steer*



The day-to-day matters addressed by our labor and employment group often allow us to spot emerging trends before they become mainstream. One such issue involves claims brought by employees who have been disciplined after engaging in “protected and concerted activities.”

The concept of employees engaging in “protected and concerted activities” is rooted in Section 7 of the National Labor Relations Act (NLRA). This federal law is administered by the National Labor Relations Board (NLRB), and is usually associated with labor unions. Section 7 grants employees the right to engage in “protected and concerted activities” without adverse consequences. Commonly, Section 7 rights are implicated – and violated – when a group of employees band together in an effort to become unionized, and the employer makes promises, threats or fires people to dissuade them from unionizing.

But Section 7 rights exist even without the presence of a labor union. Thus, Section 7 may apply where non-union employees approach management with complaints in an array of situations. Often this would involve issues concerning terms and conditions of employment, such as wages, hours or working conditions. But an expansive reading can include complaints about individual supervisors, unsafe working conditions, or work rules deemed to be “unfair.” What happens if an employer fires or disciplines employees making those complaints?

The employee(s) impacted can file an unfair labor practice charge (ULP) with the NLRB, which will investigate, and may adjudicate alleged violations before an Administrative Law Judge.

Importantly, even if the ULP is without any merit, the discharge or discipline of an employee who has filed a ULP may itself violate the NLRA. In other words, outcomes can take years, and awards of back pay can be large. Employees can file ULP’s for free without the assistance of lawyers. It is an expensive and effective tool to create a problem for employers. Employers are encouraged to seek guidance in situations where an employee or group of employees complain about systemic issues.

About Richard L. Steer, Partner

Richard is a Partner of Tarter Krinsky & Drogin LLP. Richard concentrates his practice on employment and labor law. He has extensive experience in the area of Employment Practices Liability Insurance and has defended a wide range of employers and insurance companies and their policy holders in employment discrimination, labor and employment relations litigation. Richard can be reached at rsteer@tarterkrinsky.com.