

# Pandemic Pitfalls for the Unwary: NLRA Rights for Non-Union Employees

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North and South Carolina are the least unionized states in the nation, but employers in the Carolinas should not overlook the protection the National Labor Relations Act provides for their non-union work forces, especially during the COVID-19 pandemic.

The National Labor Relations Act (“NLRA” or the “Act”) protects the rights of employees (non-supervisors) to engage in “concerted activity,” which basically means acting together for their mutual aid or protection. The Act also provides protection for individual employees who engage in protected concerted activity when they are acting on the authority of other employees, bringing group complaints to their employer’s attention, trying to induce group action, or seeking to prepare for group action. The NLRB interprets the Act’s protection to prohibit employers from implementing policies that limit employees’ ability to discuss their own pay or benefits.

The National Labor Relations Board (“NLRB”) enforces the NLRA. Its website provides several examples of common protected concerted activities:

- Two or more employees addressing their employer about improving their pay.
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other.
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

In connection with the pandemic, employees might engage in concerted activity related to paid or unpaid sick leave, working from home, or other similar benefits. These discussions could be protected even if the employer views the requests as unreasonable or would prefer to deal with the employees individually. They may take place in person or online, even using the employer’s email or computer equipment. The NLRB has enforced employees’ rights to post certain messages on social media that it views as protected concerted activity.

Importantly, the NLRA's Section 7 rights do not cover supervisors. The NLRA defines "supervisor" to mean an individual with authority, in the interest of the employer and using his or her independent judgment, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action.

Employers may not retaliate or otherwise take any adverse action against covered employees for engaging in activity protected by the NLRA, but they are permitted to take action against supervisors who do so. Employees can file complaints with the NLRB, which will investigate and take action if it determines that the Act has been violated. Employers should also train their managers and supervisors about the basics of NLRA protections to avoid inadvertent violations of the Act. Employers who have questions about whether an employee's activity might be protected by the NLRA should consider consulting with qualified legal counsel before taking adverse action against that employee.