

PUBLICATION

NLRB Limits Confidentiality of All Employers' HR Investigations

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On July 30, 2012, the NLRB issued a decision that affects how all employers (not just those with unions) conduct human resources investigations. It is standard practice for many human resources professionals to instruct employees to maintain the confidentiality of investigations. Employers often have legitimate concerns that if employees talk to each other about an investigation, then the employees will have the opportunity to align their statements or even conceal evidence. However, the NLRB has made it clear that the practice of routinely instructing employees to keep investigatory interviews confidential violates the National Labor Relations Act.

In Banner Health System, the NLRB ruled that "the [Employer]'s generalized concern with protecting the integrity of its investigations is insufficient to outweigh employees' Section 7 rights... [I]n order to minimize the impact on Section 7 rights, it was the [Employer's] 's burden to first determine whether in any given investigation witnesses needed protection, evidence was in danger of being destroyed, testimony was in danger of being fabricated, or there was a need to prevent a cover up." The NLRB held that the employer's "blanket approach clearly failed to meet those requirements."

The practical application of the NLRB's ruling dictates that employers cannot, as a matter of course, instruct employees to maintain the confidentiality of investigations. Instead, confidentiality instructions should only be used on a case-by-case basis, when warranted by particular facts.

For questions about these or any employment-related issues, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.