

NLRB Clarifies Double Eagle Rule

1 min read

Sep 1, 2011

Employees of a condominium complex were governed by an employee manual that included a rule prohibiting employees from being on the property unless working or picking up a paycheck. A maintenance employee took a personal leave to deal with a legal claim that had been raised against him. While on leave, the employer was informed that the employee had been seen loitering on the premises and discussing his legal issues with residents. The employee was warned about this conduct, but was subsequently found engaging in the same conduct. As a result, the employee was reassigned to a less desirable position. The employee later resigned. An unfair labor practice charge was filed against the employer based on the argument that the rule under which the employee was punished was overly broad. The administrative law judge hearing the matter ruled that the rule was overbroad and that discipline imposed pursuant to an unlawfully overbroad rule is itself unlawful. This premise is commonly referred to as the “*Double Eagle* rule.” The National Labor Relations Board (NLRB) reversed, and in doing so provided some clarification regarding the proper application of the *Double Eagle* rule. Specifically, the NLRB ruled that the rule does not apply where the conduct for which discipline was imposed is “not similar” to conduct protected by Section 7 of the National Labor Relations Act. Additionally, an employer may raise an affirmative defense by establishing that the employee’s conduct actually interfered with his or her own work, or that of others, and that such interference, rather than the violation of the rule, was the true reason for the discipline. Employers should strive to have narrowly tailored workplace rules that specifically fit their workplaces, and to ensure that the basis for any termination based on misconduct is well-documented, including the effects of that misconduct on the business.

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Topics

National Labor Relations Board (NLRB)