

NLRB Provides Clarity Regarding Permissible At-Will Employment Acknowledgments

PUBLISHED ON

November 1, 2012

On October 31, 2012 the Office for the General Counsel of the National Labor Relations Board ("NLRB") issued advice memos in two separate cases clarifying that employers do not automatically violate the National Labor Relations Act ("NLRA") by requesting that employees acknowledge their "at-will employment" status. Among other things, the NLRA prohibits employers from adopting work rules or policies that chill employees' rights to select union representation and engage in collective bargaining. This portion of the NLRA applies to both unionized and non-unionized employers.

Previously, in the case of *American Red Cross Arizona Blood Services Region*, an NLRB administrative law judge ruled that the employer violated the NLRA by requiring that employees sign an acknowledgment that their at-will employment could not be changed. According to the judge, the acknowledgment could be construed as requiring employees to give up their NLRA rights to collectively bargain. That ruling caused many employers to fear that their "at-will employment" acknowledgements could subject them to NLRA liability.

But the recent cases-*In re Rocha Transportation* and *In re Mimi's Caf*-upheld acknowledgments worded slightly differently. In *American Red Cross*, the invalidated waiver stated, "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way." In contrast, Rocha's and Mimi's acknowledgments were not worded in the first-person, merely limited the power of supervisors and managers to alter the at-will relationship, and did not state that at-will employment status can never be changed. Given this, no reasonable employee would view the acknowledgments as limiting employees' NLRA rights.

While this is welcome news, these decisions make clear that the NLRB will look very closely at employers' at-will employment acknowledgments. Employers, therefore, should review these provisions to ensure that employees' rights to change their at-will status are not foreclosed, while still limiting the manner in which employer action can alter at-will status. Skilled legal counsel can help employers with drawing this somewhat fine distinction.

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