

News & Types: Employment, Labor & Benefits Update

No-Gossip Policy Violates Federal Law

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Practices: Employment, Labor & Benefits

Gossip is a terribly destructive action by employees and hurts morale and productivity. As a result, employers properly want to restrict gossip and have drafted and disseminated policies prohibiting gossip. However, policies that are ambiguous and overly broad violate federal law. In Laurus Technical Institute, JD-(ATL)-32-13, an administrative law judge of the National Labor Relations Board found the following policy statements unlawful:

Gossip is not tolerated at Laurus Technical Institute...Gossip is defined as follows:

1. Talking about a person's personal life when they are not present
2. Talking about a person's professional life without his/her supervisor present
3. Negative or untrue or disparaging comments or criticisms of another person or persons
4. Creating, sharing or repeating information that can injure a person's credibility or reputation
5. Creating, sharing or repeating a rumor about another person

The judge found this policy unlawful, because it "would reasonably tend to chill employees in the exercise of their Section 7 rights." Under Section 7 of the National Labor Relations Act, both union and non-union employees have the right to discuss their terms and conditions of employment with other employees. The judge found that this rule is overly broad, ambiguous and "severely restricts employees from discussing or complaining about any terms and conditions of employment, [including, ironically] positive comments about a person's personal or professional life." The judge is following many case decisions in which overly broad rules have been struck down. For example, rules violating federal law include those restricting "false, vicious, profane or malicious statements" and "disrespectful conduct."

What steps should Human Resources take? Examine the rules in the Employee Handbook. If these rules are ambiguous, determine how the company may more specifically define conduct that it wants to restrict and contact legal counsel to confirm your language. For example, are words such as "injurious, offensive, threatening, intimidating and harassing" unlawful?