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No Soliciting: Employer Solicitation Ban Ruled Unlawful

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Many employers have policies in place that prohibit employees from soliciting other workers for third party causes and/or distributing non-business literature. Care must be taken, however, to ensure that such policies conform to the National Labor Relations Act (NLRA).

Generally, under the NLRA, companies may **not** prohibit employees from soliciting other workers during non-working time, nor may they prohibit the distribution of literature in non-work areas during non-working time.

The National Labor Relations Board (NLRB) has issued the following [guidance](#) on this issue:

“Working time is for work, so your employer may maintain and enforce non-discriminatory rules limiting solicitation and distribution, except that your employer cannot prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.”

The board has adjudicated numerous [decisions](#) related to these types [policies](#) over the years. The NLRB’s latest decision on this front came out on August 6 in [UPMC, 366 NLRB No. 142 \(2018\)](#). At issue in the case was a healthcare facility’s ban on solicitations.

In finding the employer's rule unlawful, the board noted:

"We agree with the judge that the [employers'] Solicitation and Distribution Policy is overbroad because it prohibits off-duty employees who are permissibly on the [employers'] property from engaging in Section 7 activity. In the healthcare setting, a ban on employee solicitation outside immediate patient care areas during nonworking time is presumptively invalid. *See Beth Israel Hospital v. NLRB*, 437 U.S. 483, 507 (1978). Here, the [employers] permitted off-duty employees access to the cafeteria but prohibited them from soliciting (or being solicited by) employees on nonworking time, both in the cafeteria and in other nonworking and non-patient care areas of the hospitals. And, as the judge found, the [employers] have not satisfied their burden of demonstrating that their prohibition of off-duty solicitation was necessary to avoid disruption of healthcare operations or disturbance of patients."

In short, the agency found the employer violated the NLRA by promulgating an overbroad policy. This case serves as an important reminder that the NLRB has very specific standards that need to be followed when it comes to policies such as these, and care must be taken to ensure they are drafted in a way that comports to those requirements.