The Obama Administration & the Workplace: Issues for Today’s Electrical Contractor

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The Worst of Both Worlds

- Legislative Gridlock Leads to Aggressive Administrative Regulation
- Regulators with a Social Agenda, but Little Understanding of Workplace Reality

Agenda

- The NLRB and What You Never Thought Was Any of its Business
- The FLSA: A 1930s Statute in the 21st Century Workplace
- The Obama Workers’ Paradise: Federal Government Contractors
- Other Adventures in Wonderland
The NLRB and What You Never Thought Was Any of its Business

**NLRA § 7**

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

The NLRB’s View of the World:

If a rule or policy could reasonably be read to chill Section 7 activity, it is an unfair labor practice even if never intended, actually understood or enforced that way.
The NLRB and What You Never Thought Was Any of its Business

Confidentiality rules regarding employer or customer business information are unlawful if they could be read to prohibit discussion of wages, hours or other terms and conditions of employment.

The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

A

Discuss work matters only with other employees who have a specific business reason to know or have access to such information. Do not discuss work matters in public places.
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

B

Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential business information regarding business partners, vendors or customers.

The NLRB and What You Never Thought Was Any of its Business

Rules prohibiting employees from commenting, positively or negatively, about the employer or its business publicly, on-line or on social media are unlawful if they could be read to prohibit concerted criticism of the employer’s treatment of employees.
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

A

Associates are not authorized to answer questions from the news media. When approached for information, you should refer the person to the Media Relations Department.

B

It is imperative that one person speak for the company . . . To avoid giving misinformation. . . . answer all media questions by offering to have the public affairs office contact them.
The NLRB and What You Never Thought Was Any of its Business

Rules prohibiting employees from engaging in disrespectful, negative, inappropriate or rude conduct are unlawful if they could be read to prohibited concerted criticism of the employer.

Pick the Illegal Rule

A

Each employee is expected to work in a cooperative manner with management/supervision, coworkers, customers and vendors.
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

B

"Be respectful to the company, other employees, customers, partners and competitors."

The NLRB and What You Never Thought Was Any of its Business

Rules prohibiting employees from engaging in disrespectful conduct toward other employees are unlawful if they could be read to prohibited concerted criticism of supervisors or managers.
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

A

“Threatening, intimidating, coercing or otherwise interfering with the job performance of fellow employees or visitors is prohibited.”

Pick the Illegal Rule

B

“Do not make insulting, embarrassing, hurtful or abusive comments about other Company employees on line.”
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

B

Entering or leaving Company property without permission may result in discharge.

The NLRB and What You Never Thought Was Any of its Business

Rules restricting employee use of Company logos or trademarks are unlawful if they could be read to prohibit such use in the course of protected concerted activity.
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule

A

“Do respect the laws regarding copyrights [and] trademarks. . . . Do not infringe on Employer logos, brand names, taglines, slogans or other trademarks.”

Pick the Illegal Rule

B

“Do not use any Company logos, trademarks, graphics or advertising materials in social media.”
The NLRB and What You Never Thought Was Any of its Business

Rules prohibiting employees from leaving work are unlawful if they could be read to prohibit strikes.

Pick the Illegal Rule

A

Failure to report to your scheduled shift for more than three consecutive days without prior authorization or walking off the job during a scheduled shift is prohibited.ò
The NLRB and What You Never Thought Was Any of its Business

Pick the Illegal Rule
B

Entering or leaving Company property without permission may result in discharge.

The FLSA: A 1930s Statute in the 21st Century Workplace

- Non-exempt employees must receive 1.5x their regular rate for all hours worked in excess of 40 in a workweek.
- Original purpose was to address unemployment by making it more expensive to work fewer employees more hours.
The FLSA: A 1930s Statute in the 21st Century Workplace

Currently, an exempt employee must

- be salaried (but salary alone is not enough)
- be paid at least $450 per week ($23,660 per year).
- primary duty as an executive, administrator, professional or computer professional
- can perform 49% non-exempt duties

If highly compensated ($100K+) & primary duty is office or non-manual work, can be exempt if performing at least one exempt duty
The FLSA: A 1930s Statute in the 21st Century Workplace

In the 1930s industrial workplace,
- hourly employees were fungible
- pay rate, not benefits, drove labor cost
- People wanted to work eight hours a day for five days a week.
- everyone knew who was an "executive," "administrator," or "professional."

In the 21st Century workplace,
- even hourly employees are specialized
- benefits often make it more expensive to employ more people for fewer hours
- people want to work their own schedule, often outside the employer's direct control
- people are doing jobs not dreamed of in 1938
The FLSA: A 1930s Statute in the 21st Century Workplace

PLUS, the Obama Administration wants to use the FLSA overtime provisions to increase wages generally because it cannot pass a minimum wage increase.

REMEMBER, that is the exact opposite of the original purpose of the statute.

The FLSA: A 1930s Statute in the 21st Century Workplace

The 2015 proposed rules:

- minimum salary requirement increases to $970 per week ($50,440 per year) with annual indexed increases
- Increases “highly compensated” threshold to $122,148, with annual indexed increases
The FLSA: A 1930s Statute in the 21st Century Workplace

The 2015 proposed rules:
- seeks comments about revising primary duty test to lower permissible percentage of non-exempt work
- At the same time, massive DOL/IRS focus on misclassification of employees as independent contractors

The Obama Workers’ Paradise: Federal Government Contractors

Name almost any employee or union protection that the Obama administration has been unable to get through Congress and it likely has been imposed on government contractors by Executive Order.
The Obama Workers' Paradise: Federal Government Contractors

Â Mandatory disclosure of any merits determination, arbitral award or decision, or civil judgment in the past three years involving 14 different employment-related federal statutes and their state counterparts.

The Obama Workers' Paradise: Federal Government Contractors

Â Employers may not require pre-dispute arbitration agreements involving Title VII or torts related to sexual assault or harassment.
The Obama Workers’ Paradise: Federal Government Contractors

- Minimum wage of $10.10 per hour, adjusted annually, for all employees performing work on federal contracts, even if not otherwise subject to prevailing wage requirements.

- Prohibition of discrimination on the basis of sexual orientation or gender identity.
- Required accrual of at least seven days of paid sick leave per year.
Other Adventures in Wonderland

Â Affordable Care Act
Â Use of Criminal History Information
Â Limitations on Wellness Plans
Â Extended Leave as an ADA Reasonable Accommodation
Â Reasonable Accommodation of Pregnancy as a Title VII/PDA Requirement

Questions?

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Don't forget:
Â 10:15 - 11:30 am Special Session: Life on the Rock
Â 11:30 am - 4:00 pm NECA Show Hours