

Q:

May an Employer lawfully require employees to maintain confidentiality during an internal company investigation?

A:

Yes, if the employer has a “legitimate business justification” for the need for confidentiality. Section 7 of the federal National Labor Relations Act (NLRA) guarantees employees the right to engage in “concerted activities,” such as communicating with one another about their terms and conditions of employment. The NLRA applies to most private sector employers in the United States, even if their employees are not represented by a union. The National Labor Relations Board (NLRB) is the federal agency responsible for interpreting and enforcing the NLRA. It recently took the position that employers may not maintain “blanket” policies requiring employees to maintain confidentiality during internal investigations because such policies interfere with employees’ Section 7 rights. Employers must instead establish that it has a legitimate business justification for requiring employee confidentiality during a particular investigation. Legitimate business justifications can include: the need to protect witnesses, preserve evidence, avoid the fabrication of witness testimony and/or prevent a cover-up.



Jennifer A. Sabovik
Bullard Law

jsabovik@bullardlaw.com

503.248.1134 | www.bullardlaw.com

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