



A Fox Rothschild Podcast

Labor Law Lineup

Episode 16: Protected Concerted Activity

Featuring Mark Eskenazi and Katie Cohodes of Fox Rothschild

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Mark: Welcome to "Labor Law Lineup." I'm Mark Eskenazi.

Katie: And I'm Katie Cohodes.

Mark: We're labor and employment attorneys at Fox Rothschild, breaking down how the current state of labor law affects your workplace.

Katie: Mark draws on deep experience shaping federal labor policy at both the White House and the National Labor Relations Board.

Mark: Katie offers sharp insight as former in-house counsel who's dealt firsthand with a broad range of workplace challenges.

Together, we break down labor law news for people leaders.

Katie: And we promise to keep it brief, because we know your time is valuable and your inbox is full.

Mark: Please reach out if you're a client of Fox Rothschild or a listener who wants to continue the conversation on anything we cover.

Let's start with a simple question. When can employees team up and speak out about work and be legally protected?

Katie: That's what we call protected concerted activity. Think of it this way. When employees act together to talk about or try to change their workplace conditions, whether it's about schedules, safety or their pay, they're usually protected from getting disciplined for it.

Mark: Here's the kicker. It does not require a union for them to be protected.

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It could be two or more employees working together or even just one speaking on behalf of coworkers. Like the 1962 Supreme Court case where several employees in a non-union facility walked off the job together to protest cold working conditions after they had complained to the boss about inadequate heat, they were fired, but the Supreme Court held their protest was protected even without a union.

Katie: So what's not protected activity? This could include violence, certain types of threats or harassment. Disclosure of trade secrets or statements so egregious they fall outside acceptable standards. Those can still get employees in trouble.

Mark: Exactly. The protection really isn't a blank check for employees to do anything that they want. For HR the takeaway is this, train managers to hit pause before disciplining. When there's group talk about working conditions, encourage them to ask themselves, are they raising a shared workplace concern? If yes, escalate that to HR or counsel. Again, this is important even if you don't have a union.

Katie: Right, and the bottom line is protected concerted activity happens all the time, even in casual conversations. Treat it as a moment to hit pause, slow down, assess and document.

Mark: As my torts professor used to say, don't knee-jerk, analyze. Thanks for joining. See you next time.

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