

# Can Employers Fire Employees Participating in 'A Day Without Immigrants' National Strike?

Client Advisories

02.16.2017

---

Employers considering firing employees for participating in 'A Day Without Immigrants' strike, or any strike for that matter, need to keep in mind the National Labor Relations Act (NLRA). This law applies to both union and non-unionized employers and gives employees the right to engage in "concerted activities" for purposes of "mutual aid or protection." It is an unfair labor practice for an employer to interfere with employees in the exercise of such a right. Courts, as well as the National Labor Relations Board (NLRB), which enforces the NLRA, interpret this right very broadly. But there typically needs to be a link to working conditions before an employee's activity is deemed protected.

In 2008, the NLRB's General Counsel published a guidance addressing concerted activities in the context of political advocacy. The general rule set forth was that employee political advocacy, such as participation in a protest, may be protected if there was a "direct nexus" between the issues that are the subject of the protest and employment-related concerns. For example, in 2006, Congress was considering immigration reform legislation that would have imposed restrictions on employees before they were allowed to work in the United States. The NLRB General Counsel determined that protests regarding such proposed legislation were therefore for "mutual aid or protection" because there was a direct nexus to employment-related concerns.

Employees refusing to work to participate in 'A Day Without Immigrants' Strike, however, may not be engaged in protected activity. This is so because there is not necessarily a "direct nexus" to any employment-related concerns. The strike has instead been described as a response to President Trump's immigration agenda, which includes a pledge to seal the United States border with Mexico and a travel ban on citizens of certain countries. This seems to be more of a political issue that is not directly connected to any specific employment concern. NLRB cases also indicate that failing to report to work to participate in a political cause is not protected because the employer cannot address the underlying grievance, and the protest does not serve as an economic tool to improve working conditions. Thus, employees engaging in such protests--instead of working--are likely subject

to discipline, provided done so pursuant to what the NLRB describes as “lawful and neutrally-applied work rules.”

That said, employers would be wise to consider the practicality of firing employees--especially if there are many who decide to partake in a one day political protest. They would also be wise to ensure that they have “lawful and neutrally applied work rules” in the first place. If, for example, attendance rules are not clear or not consistently enforced, then discipline may not be warranted less the employer is prepared for a legal fight.

If you have any questions about this advisory or other labor and employment matter, please contact **Douglas Diaz, Esq.** or any member of Archer’s **Labor & Employment Law Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

*DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal or tax advice, and may not be used and relied upon as a substitute for legal or tax advice regarding a specific issue or problem. Advice should be obtained from a qualified attorney or tax practitioner licensed to practice in the jurisdiction where that advice is sought.*

© 2025 Archer & Greiner, P.C. All rights reserved.

