

HR QUESTION ? of the month



Employees discussing wages?

Question: I was told that it is illegal for employees to discuss their wages with a fellow employee. Could you verify if this is correct?

Response: The opposite is actually true. Employers cannot prohibit employees from discussing their salaries/wages with one another and generally cannot take adverse action against employees who do so. The National Labor Relations Board (NLRB) broadly defines activity that is protected under the National Labor Relations Act (NLRA) and the right to discuss wages is among the protected rights that employees have under this law.

Specifically, salary discussions among employees are protected under the NLRA, which applies to both unionized and non-unionized employers alike, and prevents an employer from interfering with, restraining, or coercing employees in exercising their rights under the Act. The NLRA protects employees' right to discuss their wages, hours, and other terms and conditions of employment for their mutual aid or protection. In 2005, the NLRB expanded the potential arena for these violations in a case holding that even a broadly stated generic corporate confidentiality policy (as opposed to a more narrow policy prohibiting only salary discussions) also violated the Act because it "could reasonably be construed" to prohibit employees from discussing their wages or other terms and conditions of their employment. This case was subsequently affirmed by the federal Circuit Court of Appeals that reviewed it in 2007. You may wish to review the NLRB's guidance on protected concerted activity at <http://www.nlr.gov/rights-we-protect/protected-concerted-activity> (see internal links for additional information). This article from the U.S. Department of Labor also addresses this issue: https://www.dol.gov/wb/media/pay_secrecy.pdf.

Accordingly, any employer mandate or rule prohibiting or even discouraging employees from discussing their own wages (or other terms and conditions of employment) with co-workers -- and any policy that seeks to take adverse action against employees who do so -- likely violates Section 8(a)(1) of the NLRA, and is not advised. We recommend that you have local counsel review the employer's policies to ensure they do not run afoul of applicable laws.

Want to learn more about how to handle issues like this? [Click here](#) to listen to our Podcast about employees discussing wages.

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