

# NLRB takes aim at at-will clauses in employee handbooks

In a continuation of its recent anti-employer rulings, the National Labor Relations Board (NLRB) is now focusing on a staple of employee handbooks—at-will employment clauses that notify employees they can be terminated at any time for any lawful reason.

**Case 1:** The NLRB took issue with the American Red Cross handbook, which said the at-will relationship “cannot be amended, modified or altered in any way.” The NLRB said that because joining a union could change an employee’s at-will status, the clause could be viewed as prohibiting union participation.

**Case 2:** The NLRB also issued a complaint against Hyatt Hotels for a less broad clause that said employees’ at-will status “can only be changed in writing” signed by one of two Hyatt execs.

These cases and subsequent comments by NLRB officials indicate that at-will statements may be the NLRB’s next enforcement target. According to the Nixon Peabody law firm, the NLRB believes that, “if an employee could reasonably construe an at-will acknowledgment to mean that even union representation and a collective bargaining agreement could not alter his or her at-will status, the employee might conclude that union organization is futile,” and, thus, the at-will provision would violate the National Labor Relations Act (NLRA).

**Advice:** Examine the at-will provision in your handbook and other employment documents for compliance with the NLRA. Weigh your specific workplace circumstances when deciding whether you need to modify at-will provisions in your employment documents.

*A safe bet:* Include language that states the at-will provision does not affect employees’ ability to bargain collectively and engage in concerted activities regarding the terms and conditions of their employment under the NLRA.

Consult your attorney for advice on your specific situation.