

What is the NLRB doing with at-will status?

Q. Could you explain the National Labor Relations Board's (NLRB) recent challenges to at-will employment policies?

A. The NLRB has challenged at-will employment policies in two recent cases, alleging that such policies were unlawful under the National Labor Relations Act (NLRA).

In *American Red Cross Arizona and Lois Hampton* (28-CA-23443), the NLRB challenged the at-will section of the Red Cross's employee handbook, which stated the at-will employment relationship could not be altered without the signature of both the employee and either the executive vice president, the president or the chief operating officer.

An NLRB administrative law judge held that the employer maintained a prohibitively "overly broad and discriminatory" statement regarding the at-will section of the employee handbook. The judge said the language essentially constituted a waiver by employees of their right to engage in concerted activities to change their at-will employment status in violation of the NLRA.

In *Hyatt Hotels Corporation and Unite Here International Union* (28-CA-061114), the NLRB alleged that a similar at-will provision in the acknowledgment section of an employee handbook was also "overly broad and discriminatory."

The statement said, "I acknowledge that no oral or written statements or representations regarding my employment can alter my at-will employment status, except for a written statement signed by me and either Hyatt's Executive VP/Chief Operation Officer or Hyatt's President."

The parties entered into a settlement agreement in which Hyatt agreed to rescind and revise the sections of its employment agreement that purportedly amounted to an unfair labor practice, including the at-will provision.

Although these controversial cases have arisen exclusively in Region 28 of the NLRB (located in Arizona), they reflect the NLRB's new position with respect to at-will provisions.

Employers should examine at-will provisions in their employment documents for compliance with the NLRA. Because much in this area is still unclear, employers should make workplace-specific determinations regarding whether or not to modify at-will provisions in their employment documents.

Employers may choose to 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.

Employers should continue to stay informed of new developments in this area.