

# 'Keep This Private' May be an Unlawful Request During Internal Investigations



When HR or supervisors investigate claims of employee misconduct or harassment, it's common for them to ask employees to "keep this information confidential."

But an important ruling from the National Labor Relations Board (NLRB) says that such a blanket confidentiality rule barring workers from discussing ongoing investigations could violate federal labor law. The NLRB says such confidentiality requests can't be made unless "legitimate and substantial justification exists" for the ban.

**The case:** The HR director for Banner Health Systems typically asks workers involved in in-house investigations to not talk about the investigation with co-workers. She made that request of James, who was interviewed as part of an insubordination charge.

James filed a charge with the NLRB, saying this policy was an unfair labor practice that violates Section 7 of the National Labor Relations Act. Section 7 gives employees—in both union and nonunion shops—the right to discuss the terms and conditions of their employment with other employees.

The NLRB sided with James, saying that for a company to justify such a confidentiality request, it must show the existence of a substantial business justification.

**How to respond?** Avoid blanket requests for employees to keep investigations confidential. And don't discipline employees for failing to maintain confidentiality.

The Fisher & Phillips law firm says a better approach would be "to limit such requests to situations where there is a legitimate and demonstrable safety concern, a concern about witness tampering, or a risk of lost evidence. Even in such instances, the request should ideally be limited to time (*i.e.* the duration of the investigation) and scope (*i.e.* during work time and on company property)."

Read the full ruling at: [\*\*\*Banner Health System\*\*\*](#), 358 NLRB No. 93