

PUBLICATION

NLRB: Warning Coworker that Job is at Risk Inherently Protected Activity

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Earlier this month, the National Labor Relations Board (NLRB) ruled that an employee who was fired after warning a co-worker his job was at risk had engaged in inherently protected activity and must be reinstated. The case, *Component Bar Products, Inc.*, No. 14-CA-145064, involved an employee of a precision machine product manufacturer named James Stout. Stout noticed that one of his coworkers had not been present for the past two days. The coworker had been out sick, but failed to call in and report his absence. After a supervisor told Stout that the coworker no longer worked there, Stout called the coworker and warned him that his job was at risk and he needed to call in. The coworker called the employer, angry that another employee had told him he was at risk of being fired.

The employer terminated Stout for interfering with the personnel issues of another employee, citing to a policy in its employee handbook that prohibited "insubordination or other disrespectful conduct." The NLRB found that Stout's phone call was inherently protected activity given its subject matter and, therefore, that the employer's termination of Stout was unlawful. Additionally, the NLRB found that the employer's handbook provision was unlawfully overbroad, in that it could be read to (and in fact was used to) chill protected activity.

The Board's decision echoes prior decisions in which it has held that certain topics of discussion – including wages and job security – are inherently protected. In light of these decisions, employers should proceed with caution when considering disciplining employees in situations where such topics have been raised. The Board's ruling makes clear that even if an employee has engaged in conduct that a reasonable employer might find improper or unprofessional, an employee's right to engage in protected activity may outweigh the employer's right to discipline.