

PUBLICATION

Two Reviewed At-Will Employment Clauses OK'd by NLRB

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The National Labor Relations Board's (NLRB) General Counsel recently released an analysis of at-will employment clauses in two employment handbooks and concluded that neither violated the National Labor Relations Act (NLRA).

Employees at Rocha Transportation, a California-based trucking company, and SWH Corporation, doing business as Mimi's Café, an Arizona restaurant, each filed charges with the NLRB alleging that the at-will employment clauses in their employee handbooks defined at-will employment so broadly as to cause them to believe that they could not engage in activity protected under the NLRA.

Rocha Transportation's handbook advises employees that their employment is at-will and may be terminated at any time. It further states that "[n]o manager, supervisor, or employee of Rocha Transportation has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will. Only the president of the Company has the authority to make any such agreement and then only in writing." Likewise, Mimi's Café's handbook states, "[n]o representative of the Company has authority to enter into any agreement contrary to the foregoing 'employment at will' relationship."

The NLRB's Division of Advice concluded that each handbook's language was lawful. Respecting Rocha Transportation, the NLRB reasoned that because the employer's at-will employment clause explicitly states that the relationship could be changed, employees could not reasonably assume that their NLRA rights are prohibited. Respecting Mimi's Café, the NLRB concluded that its at-will clause passed muster because it did not require its employees to refrain from seeking to change their at-will status or agree that their employment relationship could not be changed in any way. Rather, it merely stated that the company's representatives are not authorized to change it.

The NLRB compared both clauses with one in the American Red Cross Arizona Blood Services Region's handbook. An NLRB administrative law judge found the at-will employment clause contained in the handbook unlawful because it included the statement, "I further agree that the at-will employment relationship cannot be amended, modified, or altered in any way." The judge ruled that such language was unlawfully overbroad and acted as a waiver of the employee's right to advocate concertedly to change his or her at-will employment status.

Because this area of law remains somewhat unsettled, the NLRB has asked its Regional Offices to submit cases involving employer handbook provisions that restrict the future modification of an employee's at-will status for further analysis. We, too, will be monitoring developments in the NLRB's analysis.

If you have questions about your company's at-will employment clauses or other employee handbook sections, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.