

NLRB Lightens Grip On At-Will Language

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Two recent advice memoranda from the NLRB's Division of Advice suggest that the NLRB may be loosening its grip on "at-will" language and acknowledgments in employer handbooks. After sending the employer community into a bit of a tizzy during mid-2012 with rulings that common at-will language violated the NLRA, these recent memoranda seem to take a less doctrinaire approach.

In two memoranda released by Associate General Counsel Barry J. Kearney, Kearney advised Regions 21 and 32 that certain handbook language dealing with at-will employment was legal and could not be reasonably construed to restrict employee Section 7 activity.

In *Fresh & Easy Neighborhood Market*, Kearney gave the NLRB's blessing to handbook language which stated:

Nothing in this [Handbook] changes this at-will relationship, guarantees you a benefit, creates a contract of continued employment or employment for a specified term, or any contractual obligation that conflicts with the [Employer's] policy that the employment relationship with its employees is at-will.

No representative of the [Employer] other than a[n Employer] executive has the authority to enter into any agreement for employment for a specified duration or to make any agreement for employment other than at-will. Any such agreement that changes your at-will employment status must be explicit, in writing, and signed by both a[n Employer] executive and you.

In addition, the memoranda approves of an acknowledgment clause which includes the language: "I further understand that the foregoing provision regarding my status as an at-will employee may only be changed by a written agreement signed by a[n Employer] executive and me that refers specifically to this provision."

In *Windsor Care Centers*, Kearney also approved of at-will language which concluded with the following statement: "Only the Company President is authorized to modify the Company's at-will employment policy or enter into any agreement contrary to this policy. Any such modification must be in writing and signed by the employee and the President."

In a footnote, the Board's Advice Division distinguishes this language from that found by an ALJ to violate Section 7 in *American Red Cross Arizona Blood Services Region*, 28-CA-23443 ("I further agree that the at-will employment relationship cannot be amended, modified or altered in any

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In light of these two advice memoranda, copies of which are available [here](#) and [here](#), as well as the advice memoranda given in *Rocha Transportation* and *Mimi’s Café*, [discussed on this Blog on November 1, 2012](#), should more clearly set forth language that employers may use with respect to the at-will relationship.