

Justified: Labor Board Upholds Discharge Of Employee Who Misused Company Security Passcode

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Employee discharge decisions often form the basis for disputes – whether they arise in court or before administrative agencies. Such decisions routinely are challenged by unions before the National Labor Relations Board (NLRB), and the agency has [overturned terminations and reinstated workers](#) in situations even where egregious misconduct was at issue. A recent case shows, however, there are limits on an employee’s ability to engage in misconduct even when activity potentially protected by the National Labor Relations Act (NLRA) is in the picture. On Feb. 28, the NLRB issued its decision in [KHRG Employer, LLC](#) in which it upheld the discharge of an employee who intentionally misused a company security passcode. The UNITE HERE union had been attempting to organize employees of a Chicago hotel. On Oct. 9, 2015, the union held a demonstration outside the hotel with about 100 employees from various employers – not just workers of the hotel. Some of the hotel employees generated a petition outlining concerns with working conditions at the company. During the demonstration, one of the hotel employees took 20 people – only six of whom were employees of the hotel – into a secured area of the basement so that the petition could be hand-delivered to a manager. The employee lied to security at the door and said all 20 people were employees of the hotel so that they could enter the basement. The employee further entered a security passcode into a keypad to gain access to the secured area where manager offices were located. The restricted area also was a place where the employer stored cash, corporate checks, financial reports, employee personal effects, and other sensitive items, which was the reason access was limited to employees. The employee and the group, once in the secured area, delivered their petition to a manager. Once becoming aware of a breach in its security protocol, the company initiated an investigation and found the employee misused his security passcode by bringing non-employees into the secured area. The company then suspended and ultimately discharged the employee for a “serious security breach.” The union alleged that the act of delivering the petition was “protected activity” under the NLRA and that the termination was thus unlawful. The NLRB disagreed. The board held that the employee lost any protection he may have had under the NLRA because he “flagrantly violated the hotel’s security protocol and unnecessarily placed at potential risk the security of other employees and the [hotel’s] property, including valuables, confidential files, and financial documents.” Accordingly, this case serves as a reminder that just because an employee may be engaged in protected activity, that does not necessarily mean he/she has carte blanche to disregard established security or other procedures. A company should, of course, take

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care to carefully evaluate any violation to ensure it is treating it the same as other similar offenses, and consider other potential factors – especially when protected activity is involved.

