

NLRB Invalidates Off-Duty Access Rule

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The National Labor Relations Board continues to slice and dice employer policies and has now ruled that a hospital policy restricting employees' off-duty access violates Section 8(a)(1) of the NLRA.

USC University Hospital in Los Angeles has an Off-Duty Access Policy which provides that: "Off-duty employees are not allowed to enter or re-enter the interior of the Hospital or any other work areas outside the Hospital except to visit a patient, receive medical treatment or to conduct hospital-related business." The policy also defines hospital-related business as the "pursuit of the employee's normal duties or duties as specifically directed by management."

The Board, in a 2 to 1 decision, applied *Tri-County Medical Center*, 222 NLRB 1089 (1976), to the USC Hospital policy. In *Tri-County*, the Board previously held that an employer's rule which barred off-duty employees access to a facility is valid only if it limits access solely to the interior of the facility, is clearly disseminated to all employees, and applies to all off-duty access for all purposes, not just for union activity.

The acting general counsel in this case asserted and Board members Pearce and Griffin agreed that the USC Hospital Policy failed to meet the third prong of the test because it allowed the Hospital to say, effectively, you can enter the facilities only when we tell you you can enter the facilities. Pearce and Griffin disagreed with the position asserted by Acting General Counsel Lafe Solomon and upheld the first two exceptions in the USC Hospital Policy (entering for medical care or to see a patient) as valid exceptions. However, Pearce and Griffin said the third (to "conduct hospital-related business") violated *Tri-County* and the Board's subsequent decision in *St. John's Medical Center*, 357 NLRB No. 170 (2011). In *St. John's*, the Board ruled that a policy that barred off-duty access except for "employer-sponsored events" violated Section 8(a)(1) of the Act.

A copy of the NLRB's decision can be [accessed here](#). It's entitled Sodexo America LLC because Sodexo is the subcontractor that provides food-related services in the hospital and its employees are represented by the National Union of Healthcare Workers.

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