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Do You Now Have To Tolerate Profane Or Abusive Outbursts By Employees At Work?

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Most people detest conflict in the workplace. And when it culminates or manifests via an employee outburst, it can drain morale and even lead to legal headaches. These situations often result in employee discipline, but a recent decision from the National Labor Relations Board (NLRB) may throw a legal wrinkle into how employers – both union and non-union – should approach these issues from a disciplinary perspective.

The ruling by the NLRB came in a case involving the company Lion Elastomers LLC. As the agency said in a press release, "… labor disputes are often heated, as the Supreme Court has recognized. The Board reaffirmed the principle that employees must be given some leeway for their behavior while engaging in protected concerted activity, in order to safeguard their statutory rights."

In other words, the NLRB now says employees, depending on circumstances, cannot be disciplined for certain outbursts, even if they use profane and abusive language. This ruling by the Biden board is a departure from recent precedent, which afforded companies more discretion to discipline in these cases.

The Biden board seems to be following the approach of the Obama board. For instance, in one case in 2014, the Obama board – following the same rationale set forth now by the Biden board – forced a company to reinstate and employee who called his boss a "f***ing motherf***er," a "f***ing crook"

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and an “asshole.” Ouch! In another case in 2015, the Obama board determined a company violated labor law when it tried to limit union buttons and stickers in the workplace that said “WTF” and “cut the crap.”

The Biden board’s return to a standard that affords employees the right to be crude, profane, and even potentially abusive and harassing in the workplace is troubling. In fact, it may even lead to tensions between employer obligations under Title VII related to harassment versus what the NLRB is now saying must be tolerated.

Bottom line: This recent ruling adds a significant layer of legal nuance to certain situations where employee outbursts occur. Employers should take note and carefully evaluate these issues if and when they occur in the wake of this decision.