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WHO ARE YOUR SUPERVISORS?

NEW NLRB DECISIONS IMPACT SUPERVISORY STATUS OF LEADPERSONS

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On October 3, 2006, the National Labor Relations Board issued three decisions which clarified the definition of a “supervisor” under the National Labor Relations Act. As a result of this clarification, the number of lead persons who qualify as supervisors under the NLRA is likely to expand. This expansion has a number of legal ramifications for employers. For instance, supervisors have no right to organize under the NLRA and may not be included within a bargaining unit with regular employees. Furthermore, supervisors have a duty of loyalty to their employer, who is faced with organizing and other union activities.

Two of the NLRB’s cases involved the question of whether charge nurses in healthcare facilities were supervisors. ***Oakwood Healthcare, Inc.***, 348 NLRB No. 37 (9/29/06), ***Golden Crest Healthcare Center***, 348 NLRB No. 39 (9/29/06). The third case involved the same question with respect to lead persons in an aluminum and vinyl door and window manufacturing facility. ***Croft Metals, Inc.***, 348 NLRB No. 38 (9/29/06). In ***Oakwood***, the lead case, the Board conducted a detailed legal analysis of the meaning of the term “supervisor” as defined under Section 2(11) of the NLRA. Section 2(11) basically provides that an individual is a supervisor if: (1) he/she has authority to perform any of twelve listed supervisory functions; (2) he/she exercises that authority through the use of “independent judgment”; and (3) he/she holds that authority “in the interest of the employer.”

In ***Oakwood***, the NLRB focused on two of the twelve supervisor functions listed in the statute: the authority to “assign” other employees, and the authority “responsibly to direct” other employees. The Board determined that the authority to “assign” employees means the act of “designating an employee to a place (such a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee . . .” The Board held the authority “responsibly to direct” means: (1) a person has “men under him,” and decides “what job shall be undertaken next or who shall do it,” and (2) is accountable for the performance of such jobs, (and thus may suffer adverse consequences for their poor performance).



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In addition to clarifying the nature of these two supervisor functions, the Board also clarified the definition of the term “independent judgment,” as meaning that a person must act, or effectively recommend action, free from control of others, and must do so based on his/her forming of an opinion, or by performing an “evaluation by discerning and comparing data.” In other words, to be a supervisor, an individual must not only have authority to perform one of the listed supervisory functions, but must also use his/her individual judgment in evaluating work situations to decide how to exercise that authority.

In the cases decided, the Board held that some of the charge nurses were supervisors, because they exercised independent professional judgment in assigning other registered nurses to certain patients or to perform certain nursing tasks. Other charge nurses were not supervisors, because although they might direct other nurses, they were not “responsible” for the tasks, and did not suffer consequences for their poor performance. With respect to the window and door production lead persons, the Board found that although they “responsibly direct” other employees, their decisions involved matters so routine that no meaningful “independent judgment” was required. Thus, they were not supervisors.

Employers should be aware that these recent NLRB cases will likely result in a reclassification of some employees to supervisory status, particularly those employees in “lead person” roles. As a result of these decisions, employers should take the following proactive steps:

- (1) Employers should consult with their labor law attorney, and review the job duties of these employees, to determine if they now qualify as supervisors. Understanding who is, and is not, a supervisor is important because these “new”

supervisors have the authority to create binding obligations for a company, and their actions can result in liability.

- (2) Employers who are either currently involved in or vulnerable to a union organizing campaign should carefully evaluate their lead persons’ job duties and responsibilities to determine supervisor status and their ability to participate in a NLRB sponsored election.
- (3) Unionized employers with lead persons who may now qualify as statutory supervisors should consider filing a unit clarification petition to remove any questions as to their appropriate classification.
- (4) Employers should provide supervisory training to individuals who are newly reclassified as supervisors under the three NLRB decisions.

For more information regarding these cases and their impact on your business, please contact the law firm of Seaton, Beck, & Peters, P.A. at (952) 896-1700 or www.seatonlaw.com and ask for any available attorney. We would be happy to assist you.

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