

NLRB Holds That Employers May Prohibit Non-Employee Union Organizers From Soliciting Employees in the Public Spaces of Their Facilities

On June 14, 2019, the National Labor Relations Board (“NLRB” or the “Board”) issued a decision in *UPMC and its Subsidiary, UPMC Presbyterian Shadyside*, reversing long-standing precedent and holding that employers may bar non-employee union representatives/organizers from soliciting employees or promoting union membership in public areas within an employer’s facility.

For almost 40 years, the Board allowed solicitation and other promotional activities by non-employee union representatives inside cafeterias, restaurants, and other areas open to the general public so long as the representatives were not “disruptive.” The Board’s previous decisions required employers to permit non-employees to engage in union promotional or organizing activity in these public spaces in most circumstances. However, under *UPMC*, employers now can bar union representatives from engaging in solicitation or promotional activity so long as the employer similarly prohibits all forms of solicitation or promotional activity by non-employees in these spaces.

In *UPMC*, the Board found that the hospital acted lawfully by removing two union representatives from its public cafeteria for discussing union organizing with hospital employees. The removal was found to be lawful because there was no evidence that the hospital knowingly permitted other solicitation or promotional activity inside the cafeteria. To the contrary, the hospital presented evidence that it had removed other non-employees for engaging in promotional activity in the cafeteria, including removing a spiritual group that was distributing literature and an individual who was soliciting money.

For employers with areas open to the general public, the consistent enforcement of a property access policy is critical to take advantage of this decision. If, for example, an employer knowingly allows religious groups to distribute pamphlets in its public cafeteria, this will likely open up the cafeteria to organizing or promotional activities by non-employee union representatives.

Employers should consider tracking requests from outside groups, as well as maintaining written documentation of incidents in which non-employees have been requested to leave the employer’s premises for solicitation. That way, if the employer is faced with a claim by a union representative that its policy was discriminatorily applied against the union representative’s solicitation activities, the employer will be in the best position to defend itself against such a claim.

If you have any questions about this Information Memo, please contact [Tyler T. Hendry](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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