



Recent NLRB Decision Limits Employer's Ability to Restrict Off-Duty Employee Access to its Property

The National Labor Relations Board's recent decision in *Piedmont Gardens*, 360 NLRB No. 100 (2014), restricts an employer's ability to regulate off-duty employee access to its property.

In this decision, the Board found a nursing home's policy requiring off-duty employees obtain supervisory permission prior to accessing company property violated Section 8(a)(1) of the National Labor Relations Act. Relying on *Tri-County Medical Center*, 222 NLRB 1089 (1976), the Board reasoned that the employer's policy was facially unlawful, because although the rule generally prohibited off-duty access, the policy contained an exception, "indefinite in scope," giving the employer broad and unlimited discretion to decide when and why employees may access the facility.

The nursing home argued that its access policy was lawful because, in practice, it only permitted off-duty employees to enter the nursing home in three limited circumstances: when an off-duty employee picked up their paycheck, attended a scheduled meeting with human resources representatives, or arrived early for the night shift. The Board, however, found the nursing home's argument unconvincing as it failed to establish that those were the *only* circumstances under which supervisors and managers had granted access in the past or had discretion to grant access. Additionally, the Board opined even if the employer had been able to establish that access was limited to the three circumstances identified, the rule would be facially invalid nonetheless because there was no evidence that the employees were informed of the limited circumstances in which off-duty access would be granted.

Based on the facts of the case, the Board declined to reach the issue of whether the nursing home's policy would be unlawful if it clearly stated that off-duty employees would be granted access only in the three identified circumstances.

What does the Board’s *Piedmont Gardens* ruling mean for employers?

- > If an employer has an off-duty employee access policy, it should consider limiting any discretion granted to supervisors to allow or deny access.
- > Employers should continue to review and revise company policies on a regular basis to conform to current Board law.
- > Any, and all, policies should be applied in an even-handed manner.

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