

MURTHA MEANS MORE INFORMATION



LABOR AND EMPLOYMENT NEWS

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Confidentiality of Workplace Investigations

While employers should keep workplace investigations (including those involving sexual, racial or other types of harassment) as confidential as possible, the National Labor Relations Board (“NLRB”) restricts all employers’ activities (including those in non-union workplaces). Rather than a blanket prohibition on any communications about the investigation, the employer must show that it has a “legitimate and substantial business justification” to require confidentiality. Employers should justify its decision to require confidentiality separately for each individual investigation. The NLRB offered examples of what could trigger the need for confidentiality: 1) witnesses needed protection; 2) evidence was in danger of being destroyed, 3) testimony might be fabricated, or 4) there was a need to prevent a cover-up.

Action Steps: Employers should:

- Revise policies or codes of conduct to remove any blanket restrictions on employees discussing internal investigations;
- Use qualifying language, and state that a need for confidentiality will be determined on a case-by-case basis;
- For each investigation, state the reasons that justify confidentiality;
- Document the decision process carefully.

Finally, if you do require confidentiality, be clear to limit the request both in time (only until the investigation is complete) and in scope (only the interview conducted, and the existence of the investigation).

Please contact Lissa Paris at lparis@murthalaw.com, 860.240.6032 or Michael Harrington at mharrington@murthalaw.com, 860.240.6049 to get more information.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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