Most physicians in Utah have very little experience or knowledge of labor law, the area of law that governs the rights of employees to act together on workplace issues like wages, benefits, hours, and other terms and conditions of employment. Physicians, especially physician employers, should know at least the basics of labor law, because it includes issues that arise in essentially every workplace.

Labor union activity is rising throughout the United States, even in conservative states like Utah. Employees have been frustrated by inflation that has outpaced wage increases and by the heavy demands that were placed on them during the pandemic. Employees in health care experienced particularly difficult expectations and demands during the pandemic and, in many cases, they are now working together to seek better working conditions. Under labor law, two or more employees working together to improve working conditions is referred to as “concerted activity” and when employees act in concert, any act of retaliation by an employer would be prohibited under labor law. I am seeing more labor activity now than ever before in my law practice. Physicians should be aware of this potential unrest and be prepared to respond in a lawful manner should they encounter it in their own workplaces.

Almost every private employer in Utah is covered by the National Labor Relations Act (“NLRA”), the main federal statute governing labor relations law in the United States. While many small employers are not covered by discrimination laws, which apply only to employers with at least 15 employees, the NLRA applies to employers with as few as two employees. Why two? That’s the minimum number of employees required to act in concert on workplace issues. The NLRA may cover even the smallest of medical clinics.

The NLRA provides robust protection to employees who act in concert on workplace issues. Here is what the NLRA says regarding the basic rights it affords to employees:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...

The word “labor organization” typically refers to a labor union, but employee rights under the NLRA go well beyond the right to join a union or the rights of unions to act as representatives of employees. The NLRA applies in non-union workplaces as well as unionized workplaces, and those rights can sometimes seem contrary to common sense.

For example, the right of employees to act in concert means that employees have the right to talk with each other about their wages, regardless of how uncomfortable that may make their employers (or other employees). While many employees consider their compensation to be a private matter between them and their employer, that is not a lawful requirement. The opposite is true: discussing wages is a fundamental right of employees under the NLRA. And employers who take action against employees for discussing wages with each other, or engaging in other concerted activity regarding workplace issues, could be charged with an “unfair labor practice” and ultimately required to reverse any discipline for such activities and restore to affected employees any income or benefits that they may have lost as a result of the discipline. The NLRA is administered and enforced by the National Labor Relations Board, which has significant powers to ensure that employees are able to benefit from the full expression of these rights.

Employees have the right to band together for the purpose of addressing any legitimate workplace issue, such as safety issues, hours of work, privacy, overtime, training, retirement benefits, health and welfare benefits, and, of course, the rules that apply in the workplace and disciplinary enforcement of those rules.

The NLRA protects these employee rights even when they may result in tension and strong feelings in the workplace. While violence, threats of violence, and abusive behavior are not protected, many controversial employee actions are.

The bottom line is that employers must be aware of these employee rights and the actions they can take proactively to reduce the likelihood of this kind of employee unrest and tension.

Surprisingly, studies have repeatedly shown that employees who seek to form a union or engage in concerted activities in the workplace are usually not motivated by a desire to get higher pay or better benefits. The most common issue is their desire to be “heard” by their supervisors and managers. In other words, the best way to avert employee unrest is to listen to your employees and respond to their individual concerns. Even if the answer is “I’m sorry, but we can’t afford that kind of a change,” or “I’m trying to hire additional employees, but for now, we have to work longer hours to keep our clinic in operation,” the fact of hearing employee concerns and responding honestly goes a long way toward mollifying those employees, and as a practical matter greatly reduces the possibility that those employee frustrations will lead to formal union organizing activity or other significant tension.

The other most important factor influencing employees to seek representation from a union or other third party is the extent to which employees perceive they are treated fairly. Employers who establish fair workplace rules and enforce them without favoritism are usually able to avoid significant employee unrest, while employers who enforce rules unevenly and arbitrarily are much more likely to encounter problems.

Labor relations rules sometimes seem contrary to common sense, and certainly can make it harder to be an employer, even of just a few employees in a small medical office. But knowing something about these rules, and taking appropriate precautionary action, can greatly reduce the risk of significant employee unrest and union activity in your workplace.

Scott A. Hagen is the past chair of the Firm’s Employment and Labor Section and current chair of its Health Care Practice Group. He has a broad practice in all aspects of labor and employment, especially in the context of the health care industry.

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