

Is a “Negative Attitude” Protected Activity?

How’s Your Attitude? With all of the pressures and problems business owners face on a daily basis, it’s certainly understandable how they can occasionally have a bad day. Then you add on all the Federal and State rules and requirements that come with managing employees, it could become challenging for business owners not to have a negative attitude towards government. Most business leaders would say this is not an uncommon occurrence, but one they work to avoid.

How’s Your Employees Attitude? The same holds true for employees who will, on occasion, have a negative attitude toward their work, coworkers or customers. However, with the ever expanding employee rights trend in employment law, we might all wonder if a **negative attitude** in our employees is something we have to accept.

According to the National Labor Relations Board (NLRB), the answer to that question is, **thankfully, no**. When an employee’s negative attitude begins to adversely affect your customers, or manifests itself in public criticism of the company, then **employers have the right** to take decisive and permanent action.

The article below is reprinted from the Employment Law Bulletin produced by the labor and employment law firm of Lehr, Middlebrooks & Vreeland, P.C., Birmingham, Al.

This issue was considered by a three-member panel of the National Labor Relations Board in the case of Copper River of Boiling Springs, LLC (Feb. 28, 2014).

- NLRB Chairman Mark Gaston Pearce considers disciplinary discharge for a “negative attitude” as chilling employee rights to be critical of their employer. According to Pearce, this interferes with employee rights to engage in concerted activity regarding wages, hours or conditions of employment.
- The three-member panel included the two Republican members of the NLRB, Philip Miscimarra and Harry Johnson, both of whom concluded that the employer’s “bad attitude” rule was permitted.

The Case: Copper River is a restaurant. Its handbook prohibited “insubordination to a manager or lack of respect and cooperation with fellow employees and guests...**including displaying a negative attitude** that is disruptive to other staff or has a negative impact on guests.

- Two employees were terminated after the company received reports that the employees used foul language when complaining to customers about the employer.
- In upholding the discharges, Miscimarra and Johnson stated that the employer’s policy “limits the rule to unprotected conduct that would interfere with the Respondent’s business interests.”

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“Attitude” is not a self-defining term. The **NLRB upholds employer terminations** when an employee’s attitude relates to an employee work assignment or an employer’s business interests, such as communications to customers. Even a bona fide employee concern may be unprotected if it is expressed inappropriately.

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STREAMLINE CXO is responsible for providing the essential support our clients need to ensure their compliance with IRS and DOL laws and regulations.

Like so many other areas of employee management matters, knowing what you can or cannot do is not always clear. There will always be situations or variables to make these decisions a little more interesting and complex. If you have employee related issues and you are uncertain as to how to proceed, your best option is to seek guidance or counsel before taking any action.

Our goal is to deliver a preventive approach to employment situations and ensure these approaches are managed appropriately. If you have questions about our services, or would like more information on **Is a ‘Negative Attitude’ Protected Activity**, please contact us.