

Protected Concerted Activity under Labor Relations Laws

Applicable Law:

29 U.S.C. § 157 (Section 7 of the National Labor Relations Act)

“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, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.”

3 V.S.A. § 903(a) (State Employees Labor Relations Act)

“Employees shall have the right...to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection....”

3 V.S.A. § 1012(a) (Judiciary Employees Labor Relations Act)

“Employees shall have the right...to engage in concerted activities of collective bargaining or other mutual aid or protection....”

21 V.S.A. § 1503(a) (State Labor Relations Act)

“Employees shall have the right to...to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection....”

Labor Relations for Teachers and Administrators and Municipal Employee Relations Acts

- Neither the Labor Relations for Teachers and Administrators Act nor the Municipal Employee Relations Act contain this language.
- While the Vermont Labor Relations Board has had many unfair labor practice cases involving municipal employees and school employees that related to whether employees’ right to engage in union activities had been violated, I am unaware of any instances where the Board has examined employee rights to engage in concerted activities for mutual aid or protection outside of the union activity context.

Questions and Answers Related to Protected Concerted Activity

What is protected concerted activity?

Generally, it is two or more employees acting together to improve wages or working conditions. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action.

What are some examples of protected concerted activity?

- Two or more employees addressing their employer about improving their pay.
- Two or more employees discussing work-related issues beyond pay, such as safety concerns or a hostile working environment, with each other.
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

Does a worker have to be a member of a union to engage in protected concerted activity?

No. Employees who are not represented by a union also have rights under the NLRA. Specifically, the NLRA protects the rights of all covered employees to engage in "concerted activity."

What are some examples related to H.707 of how protections for concerted activity been applied by the Courts?

- In *Phoenix Transit Systems v. NLRB*, the Federal Court of Appeals for the DC Circuit held that employee discussions of sexual harassment by supervisors constituted protected activity under Section 7 of the NLRA. 63 Fed.Appx. 524 (2003).
- In *NLRB v. Downslope Industries, Inc.*, the 6th Circuit Court of Appeals held that freedom from sexual harassment is a working condition which employees may organize to protect under Section 7 of the NLRA. 676 F.2d 1114 (1982).
- In *Quicken Loans v. NLRB*, the Federal Court of Appeals for the DC Circuit held that broadly written confidentiality and nondisparagement rules for employees violated Section 7 of the NLRA because they prevented employees from discussing terms and conditions of employment and restricted right of employees to self-organize and bargain collectively.