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NEW NLRB RULING CREATES NEW HAZARDS FOR EMPLOYER RETALIATION POLICIES

In the latest in a series of decisions impacting non-union and unionized employers, the National Labor Relations Board (NLRB) recently issued a new decision that jeopardizes enforcement of employers' anti-harassment and non-retaliation policies. In *Dignity Health d/b/a St. Rose Dominican Hospitals and Michael S. Dela Paz*, an employee (Dela Paz) had frequent disputes with another hospital employee who worked as a cashier. Dela Paz ultimately threatened the cashier by stating that he would "take care of [her]," and the hospital employer placed him on administrative leave.

While on leave, Dela Paz circulated a petition requesting signatures from other employees who had issues with the cashier. Although the hospital reinstated Dela Paz after a brief suspension, it warned him that retaliation against the cashier and other coworkers was prohibited by hospital policy. Yet, Dela Paz continued collecting signatures for his petition after his reinstatement. When his supervisors learned of his activities, he was discharged for violation of the employer's zero tolerance anti-retaliation policy.

Dela Paz filed an unfair labor charge, and the NLRB decided in his favor. Specifically, the NLRB found Dela Paz's signature campaign was protected concerted activity under the National Labor Relations Act and therefore he could not be terminated for his behavior. The NLRB ordered Dela Paz be fully reinstated and paid lost back wages.

The NLRB's decision creates significant dangers for employers seeking to enforce anti-retaliation and anti-harassment policies. If Dela Paz's employer had failed to respond to the ongoing signature campaign, the cashier could have filed claims with the Equal Employment Opportunity Commission for retaliation and/or harassment against the hospital. Employers must therefore be extremely careful about navigating between these two hazards when wading into disputes between employees. These situations, which could cause an employer to run afoul of the NLRB or the EEOC, are highly fact specific and require careful analysis of both statutes and corresponding case law. Human Resource professionals and in-house counsel alike need to be aware of the interplay of these two statutes and consult with experienced labor and

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