

EMPLOYMENT LAW UPDATE

IMMIGRATION RALLIES

VOLUME 2, ISSUE 1

APRIL 14, 2006

Recently we have received several inquiries from clients regarding handling employees who wish to leave work to participate in pro-immigration rallies. Some immigration groups have announced a "Day Without an Immigrant" or "En Gran Boycott" planned for May 1. The best course of action for companies facing this situation is to treat absences for attending these rallies the same way that they would treat any other absence, excused or unexcused. If employers have policies that call for disciplining employees who fail to give notice or who are not authorized to take any additional time off, then the best practice would be to treat absent employees in accordance with these policies. However, employers who wish to discharge employees who attend these rallies should proceed with care.

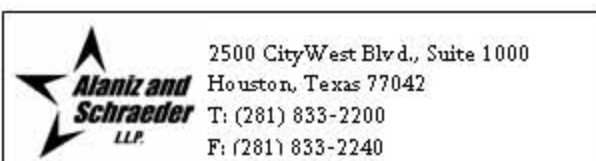


First, keep in mind that this immigration debate is politically charged and any employees who become involved should be treated carefully. Many immigration organizations are already asking all workers who are discharged for attending rallies to come forward. It is likely that these same organizations will support and encourage discharged workers to bring unfair labor practice charges against employers. Other immigration organizations have threatened to compile lists of all companies who fire employees during this time and make the lists public.

Second, there are labor laws which protect employees from unfair discipline for organizing to express their concerns over job security—otherwise known as *protected concerted activity*. Employees who participate in these immigration rallies could claim that such participation constitutes *protected concerted activity* under the National Labor Relations Act because it is arguably for the mutual aid and protection of employees. After close analysis of the issue, we have determined that participation in immigration rallies would probably not constitute *protected concerted activity* because there are many other less disruptive avenues that employees can engage in short of mass walk-outs, e.g., signing petitions, writing letters to legislators, etc. However, the NLRB and the Ninth Circuit, which covers issues like this in California, Oregon, Washington, Alaska, Idaho, Montana, Nevada, Hawaii, and Arizona, tend to be very pro-employee. Employers wishing to discharge or suspend their employees for attendance at rallies should contact us before proceeding.

Employers may certainly notify their employees and remind them of the company's attendance policies and that all employees are expected to work their scheduled shifts. However, you may also wish inform employees that they will be allowed to participate in rallies during lunch breaks, or on their own time. Also, employees may be allowed to use vacation time to attend these rallies. Employees who are reminded of these policies may be more likely to adhere to them.

For more information about this, or for any other questions about labor and employment law, please contact us at (281) 833-2200.



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