

WHAT IS CONCERTED ACTIVITY?

CONCERTED ACTIVITY DEFINED

Concerted activity refers to actions taken by workers together or by a single worker on behalf of a group to improve their wages, hours, or working conditions, which are protected under section 7 of the National Labor Relations Act (NLRA).¹

For example:

- **Petition to boss for change in working conditions:** There must be a connection to working conditions. For example, a petition signed by workers asking for the temperature to be raised inside due to cold working conditions.
- **March on the boss:** Engage in the march as a group with work-related demands.

LIMITATIONS ON CONCERTED ACTIVITY

There are limits to these legal protections. While most private employees can engage in protected concerted activity, there are some roles that are excluded. Government employees, agricultural workers, independent contractors, and supervisors are generally excluded from the protections of the NLRA.² Supervisors are protected under the NLRA against retaliatory discharge for refusing to take actions in violation of other employees' rights.

You can also lose protection by:

- Saying or doing something egregiously offensive, like using racial slurs
- Making a knowingly and maliciously false statement. Anything said should be provable.
- Publicly disparaging your employer's products or services without relating your complaints to any labor issue. "This hospital is dangerous for patients" could get you in hot water. "This hospital is dangerous for patients because we're so understaffed" makes the connection to working conditions.
- Insubordination can also be an issue. The NLRB balances workers' right to concerted activity with the employer's right to an orderly workplace, so maintain a defensible respectability.

¹ *Meyers Indus.*, 281 NLRB 882 (1986).

² 29 U.S.C.S. § 152.

TIPS FOR CONCERTED ACTIVITY

Whether something is protected concerted activity can be broken down into two parts. Before acting, ensure you have clarity about these two questions.

- **Is it concerted?** This is the “who” and depends on how the action connects to those of your co-workers.
- **Is it for mutual aid or protection?** This is the “what/why” and depends on the goal of the action.

Consider the following tips:

- **Make it about the group, not just yourself.** The more a worker links their conduct to other co-workers, the more likely the worker’s actions will be considered concerted.¹
 - If you say, “I think I deserve a raise,” that’s not concerted activity; if you say, “We deserve higher pay because we all struggle to afford rent due to inflation,” that is concerted activity.
 - Discussions with co-workers should be frank, and workers should be explicit about their intention to engage in group action.
- **Tie your workplace complaint to other workers:** Instead of saying to your boss, “I do not feel safe using this machine,” try saying, “We do not feel safe using this machine.”
- **Develop actions that look like objective evidence of concertedness:** Write a petition to your boss signed by multiple workers, engage in a work stoppage, or voice a common complaint during a staff meeting.
- **Document your conversations and gather evidence.**
 - Keep track of who you spoke with and what was said.
 - Courts look at who else voiced similar concerns or how broadly an issue was discussed.
- **Frame workplace discussions with management as grievances, not collaboration:** Instead of “Can we work together to solve this issue?”, say “We deserve better working conditions, and we demand change.”

¹ See *Grimway Enters.*, 315 NLRB 1276 (1995).

WHAT TO DO IF YOUR EMPLOYER INTERFERES

STEP 1: DETERMINE IF YOUR EMPLOYER TOOK AN "ADVERSE ACTION"

An adverse action is any punishment your employer gives you for engaging in protected concerted activity. **Gather evidence: Keep records of conversations, emails, and actions taken against you.**

- This includes firing, demotion, pay cuts, reducing hours, changing job duties, discipline, unfair treatment, or transferring you to a worse position.
- Example: If a worker who helped organize a petition suddenly has their shifts cut, that could be retaliation.

STEP 2: DECIDE IF YOU WANT LEGAL HELP AND FILE A CHARGE

You do not need a lawyer to file an unfair labor practice (ULP) charge, but having one may help, if you can find one. **You must file your charge within six months of the employer's action.**

How to file:

1. Go to the National Labor Relations Board (NLRB) website.
2. Select "E-Filing" to submit a charge online.
3. You can also visit or call your local NLRB regional office for help.

You don't need a lawyer, but legal help can make the process easier.

STEP 3: WHAT HAPPENS AFTER FILING?

Investigation: The NLRB's Regional Director will review your case. They may interview you and other workers, ask for documents or messages related to the issue, talk to your employer, or engage in other fact-finding activities.

Possible Outcomes:

- Settlement: Most meritorious cases end in a settlement where the employer agrees to fix the issue.
- Dismissal: If the NLRB finds no violation, they will close the case.
- Hearing: If the employer refuses to settle, the case may go to a hearing before an administrative judge where the NLRB acts as the prosecutor.