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Saying The Quiet Part Out Loud: When Employee Talk About "Quiet Quitting" Could Become Protected Speech

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By now, many employers have heard about "quiet quitting." Though the term's meaning varies depending on who's using it, it generally refers to employees doing only as much work as the job requires without going the extra mile. Employers may view quiet quitting as lack of engagement or laziness, but employees may see it simply as setting clear boundaries at work and providing exactly the output the employer has asked them to provide. Either way, when employees start talking about quiet quitting, their speech may be protected by federal law, and HR professionals should proceed with caution.

When employees talk about quiet quitting, they often connect it with compensation, promotions, and employee benefits. For instance, a recent NPR article offered an alternative term for quiet quitting: "acting your wage." Similarly, social media outlets are full of examples of user videos illustrating the discussion. For example, a recent parody video depicts an HR professional confronting an employee as to whether she was "telling everyone in the office" about "quiet quitting." Without hesitation, the employee admits to doing so and even suggests that the HR professional "should try it sometime." In response, the HR professional instructs the employee to refrain from talking about "quiet quitting" around the office because it was

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“creating an unhealthy mindset for the Company’s employees.” The employee then responds with, “but don’t you think requiring employees to go above and beyond for a Company that pays them a salary they can barely live off, don’t you think that is unhealthy?” The HR professional threatens the employee with corrective action if she continues to talk about “quiet quitting” with other employees.

Although this exchange was fictional, the HR professional’s comments are a good example of conduct that might violate Section 7 of the National Labor Relations Act (NLRA). Section 7 protects employees’ “concerted activities,” which includes discussing the terms and conditions of employment. This law applies regardless of whether the workforce is unionized, so all employers must comply with Section 7’s protections on employee speech. In the example above, the employee admitted to talking to other office employees about “quiet quitting” and further elaborated that “quiet quitting” is inextricably tied to the job’s compensation, which is undeniably considered a term and condition of employment. Given the National Labor Relations Board’s (NLRB’s) recent “expansive” definition of “protected concerted activity,” the employer may likely face sanctions under Section 7 if it took corrective action against the employee.

What about the HR professional’s point that the employee is creating an “unhealthy mindset” for others? The NLRB has recognized circumstances where an employee’s speech may lose Section 7 protection, such as when an employee’s speech becomes “disruptive” or “abusive.” But that is a difficult hurdle for employers to clear, especially considering recent NLRB decisions. Even the use of profanity or offensive language in the workplace does not automatically cause an employee to lose protection under the NLRA. As distressing and defeating as it may be for employers to hear talk of “quiet quitting” in the workplace, employers should be careful in taking disciplinary or adverse action

against those engaging in such discussions, especially where it is clear that talks of "quiet quitting" go beyond an individual's decisions to set personal boundaries and into criticism of a Company's pay practices or other workplace policies.

Takeaways

Employers should avoid knee jerk reactions and proceed with caution before taking any disciplinary action against an employee for allegedly disrupting the workplace by promoting "quiet quitting" to others. Understandably, employers may worry about the impact of "quiet quitting" on employee productivity and overall morale. While even the act of "quiet quitting" may in some circumstances be protected concerted activity, Section 7 of the NLRA does not protect poor job performance. An employer is still free to coach or otherwise take corrective action in the workplace against an employee who fails to meet the employer's expectations. However, as a matter of best practices, employers should be able to clearly identify and document specific examples of poor performance or to point to objective metrics showing subpar performance. Employers should think twice about disciplining an employee based on mere speculation that talks of "quiet quitting" will impact employee productivity.

Further, employers should consider that conversations about "quiet quitting" could be a symptom of worker fatigue or employees feeling undervalued, especially since many workers have realigned their work-life priorities coming out of the COVID-19 pandemic. In the long run, it may benefit employers to deliberately evaluate overall employee satisfaction in their workplace to determine if there may be a solution to the root cause of these "quiet quitting" discussions. These potential solutions may range from simply having conversations with employees about clearer pathways to promotions, increasing compensation, or encouraging use of accrued PTO.

For any labor or workforce concerns, contact your Akerman labor and employment attorney for further information and guidance.

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