General Principles Regarding Workplace Solicitation

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Many employers maintain a written policy addressing solicitation of employees in the workplace.

The NLRA regulates these policies because they could be used improperly to limit union organizing activity.

To pass muster under the NLRA, a no-solicitation policy:

Must permit solicitation between employees during non-working time (*e.g.*, breaks, meal periods, before or after scheduled work shifts.) Both employees (the one doing the solicitation and the one being solicited) must be on non-working time.

Must permit solicitation in a working area, unless the working area might qualify as a “patient care area” in the case of a nursing home, acute care, or similar patient treatment environment. Solicitation may be prohibited in a “patient care area.”

Must not reference “company time” or similar formulations, but must instead refer to “working time.”

Separate rules regulate no-distribution policies (*e.g.,* handing out fliers), which are slightly different than no-solicitation rules.

Employers may not “discriminate” against union solicitation in the application of their no-solicitation policy (*e.g*., permit solicitation for some causes, but not for union membership).

Employers may ban third parties from soliciting anywhere on their property, but may not enforce this ban in a discriminatory manner (*e.g*., permit some third parties but not others to solicit).

The participation in the Medicaid expansion petition circulation effort would probably constitute lobbying for a 501(c)(3) organization. There are restrictions on the how much lobbying a 501(c)(3) can perform without jeopardizing its exempt status or potentially incurring an excise tax.  What those limits are depend on the expenditures of the organization, both in total, and on all of its lobbying activities.  It also depends on whether the organization has made an election under 501(h) of the Internal Revenue Code.  501(c)(3) organizations with a particular concern about this issue should consult with their respective advisors about their own particular circumstances.