

Ask the Lawyer: Can I be Prohibited from Discussing Wages?

By Mathew Tully Question:

Can my employer prohibit me from talking to others about wages? Response:

Wages are always a hot topic, wherever you work. "Hot" in that there is always much interest in the topic, and also in that there is the possibility you could get burned if management catches you talking about them. Generally, employers cannot impose blanket policies prohibiting employees from discussing their wages. Such a rule "broadly prohibiting discussion of wages among employees" could constitute an unfair labor practice, the U.S. 2nd Circuit Court of Appeals noted in *Perez v. Jupada Enterprises Inc.* (2011). The main reason why employers cannot impose such a ban on wage discussions lies in Section 7 of the National Labor Relations Act. This section of law affords employees the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." In *Perez*, the court noted that wage discussion bans can interfere with employees' protected concerted activities. The National Labor Relations Board in *Hoodview Vending Co.* (2012) noted that wage discussions are "inherently concerted" because wages are a "vital term and condition of employment" and the "grist on which concerted activity feeds." By putting limitations on wage discussions to certain times or places, employers can establish what the NLRB may regard as a qualified rule, the 2nd Circuit noted in *Perez*. The policy, for example, could limit wage discussions to after working hours and off work premises. That said, Section 7 does not cover all wage discussions. In *Hoodview*, the NLRB pointed to the example of an employee seeking a raise for herself discussed wages with the employee of another company. This conversation was not covered by Section 7 because the employee "was not attempting to enlist the aid of the other employer's employees." Employees who believe they have wrongly been punished for engaging in protected activities, such as wage discussions, should immediately contact an employment law attorney. Business owners should likewise consult with an attorney if they have concerns over employees' wage discussions.