

# **PAY SECRECY: LEGAL, POLICY, AND PRACTICE ISSUES FOR EMPLOYERS**

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## **ABSTRACT**

*On April 8, 2014, President Obama issued an Executive Order amending Executive Order 11246 of September 24, 1965 prohibiting federal contractors from retaliating against employees for disclosure of compensation information (Obama, 2014). Executive Order 11246 covers employees who work for service and supply contractors and construction companies covered by Office of Federal Contract Compliance Programs (OFCCP) regulations that apply to federal government contracts. The Executive Order was heralded by organizations like the National Women's Law Center as "an end to pay secrecy gag rules for employees of federal contractors" (Watson, 2014). It was characterized by others as "unnecessary" given long standing protection afforded to employees covered by the National Labor Relations Act (NLRA) (Smith, 2014, A). Pay secrecy has often been characterized as a "contentious" issue in many organizations and President Obama's recent executive order has rekindled the debate as to the utility of pay secrecy policies and rules in organizations. This paper examines recent legal, policy, and practice issues for employers covered by the National Labor Relations Act regarding the use of pay secrecy policies and, recommendations to reduce employer exposure to litigation.*

## **INTRODUCTION**

President Obama's amending of Executive Order 11246 in April of 2014 continued to stoke the long running debate over the use of pay secrecy policies by organizations. The pay secrecy issue has been often characterized as "contentious" (Colella, Paetzold, Zardkoohi & Wesson, 2007) and (Gely & Bierman, 2003) and the long run nature of the debate surrounding the issue has been traced back to Matthew 20: 1 – 16 and the parable involving laborers complaining about their rate of pay (Gely & Bierman, 2003). The long debate over the utility of the issue has come from many different perspectives. In the review by Colella et.al, the authors identified "arguments" based on management, economics, psychology, and cultural perspectives. They also noted that there has been limited empirical and scholarly research on pay secrecy and "that most of what we thought we knew about pay secrecy was anecdotal" (Colella, Paetzold, Zardkoohi, and Wesson, 2007, p. 67). There does seem to be consistent survey research supporting the reported wide spread proliferation of both formal and informal pay secrecy policies in the private sector of the economy (Gely & Bierman, 2003 and Hayes & Hartmann, 2011). Hayes and Hartman reported on the Institute for Women's Policy Research/Rockefeller

Survey of Economic Security in 2010 that “about half of all workers” reported “that the discussion of wage and salary information is either discouraged or prohibited and/or could lead to punishment” (Hayes & Hartmann, 2011).

Colella et.al. in their review of the literature identified negative and positive aspects associated with pay secrecy policies. On the negative side, citing limited empirical research, Colella et.al. reported that pay secrecy is generally “bad for organizations, also demonstrating lowered motivation” (Colella, Paetzold, Zardkoohi & Wesson, 2007). Another often heard negative aspect associated with pay secrecy is that it may facilitate employers’ efforts to conceal discriminatory pay practices (Colella, Paetzold, Zardkoohi & Wesson, 2007; Obama, 2014). If “employees are prohibited from inquiring about, disclosing, or discussing their compensation with fellow workers, compensation discrimination is much more difficult to discover and remediate, and more likely to persist” (Obama, 2014).

With respect to positive aspects associated with pay secrecy, Colella et. al. identify survey efforts “asking how people feel about pay secrecy” reporting that “the majority of U.S. workers are in favor of it (Colella, Paetzold, Zardkoohi & Wesson, 2007, p. 56). They also noted that organizations are aware of the potential illegality of pay secrecy, that many organizations still utilize both formal and informal methods to promote it, and that “individual employees and many organizations find pay secrecy useful and desirable” (Colella, Paetzold, Zardkoohi & Wesson, 2007, p. 56).

Gely and Bierman also cited survey data from a variety of sources that support the wide spread use of pay secrecy rules by a “significant number of private sector employers in the United States” (Gely & Bierman, 2003, p. 122). They also noted that pay secrecy and confidentiality rules are “quite prevalent despite the fact that they have consistently been held by both the National Labor Relations Board (“NLRB” or “Board”), and the federal courts as violations of Section 7 of the National Labor Relations Act (“NLRA” or “Act”)” (Gely and Bierman, 2003, p. 123). Section 7 of the National Labor Relations Act (NLRA) applies to employers engaged in interstate commerce.

The National Labor Relations Board (NLRB), the federal agency that enforces the NLRA, has adopted a dollar volume of business standard to determine which employers are covered by the statute. For example, employers in retail business that have a gross annual volume of business of \$500,000 or more are under the NLRB’s jurisdiction (NLRB, 2014, A). Employers excluded from the NLRB’s jurisdiction by statute or regulation include federal, state and local governments, including public schools, libraries, and parks, employers who employ only agricultural laborers, and those engaged in farming operations that cultivate or harvest agricultural commodities or prepare commodities for delivery (NLRB, 2014, A).

Employers subject to the Railway Labor Act including interstate railroads and airlines are also not subject to NLRB jurisdiction. While most employees in the private sector are covered by the NLRA, the Act specifically excludes individuals who are:

*employed by Federal, state, or local government*  
*employed as agricultural laborers*  
*employed in the domestic service of any person or family in a home*  
*employed by a parent or spouse*  
*employed as an independent contractor*

*employed as a supervisor (supervisors who have been discriminated against for refusing to violate the NLRA may be covered)  
employed by an employer subject to the Railway Labor Act, such as railroads and airlines  
employed by any other person who is not an employer as defined in the NLRA (NLRB, 2014, A).*

The purpose of this paper is to examine recent legal, policy, and practice issues for employers covered by the National Labor Relations Act regarding the use of pay secrecy policies, and recommendations to reduce employer exposure to litigation.

## LEGAL

Pay secrecy and pay confidentiality rules (“PSC rules”) that both generally prohibit employees from discussing their wages with coworkers have created legal problems for employers (Gely & Bierman, 2003). PSC rules have been found to violate Section 8(a)(1) of the NLRA. Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with employees Section 7 rights to engage in protected concerted activity (Gely & Bierman, 2003). Survey data previously noted has reported the wide spread use of both of these types of policies over the years by employers either in employment manuals or through direct communication by supervisors to employees, generally early in an individual’s employment with an organization.

<p><i>“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, <b>and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection</b>, and shall also have the right to refrain from any or all such activities” (Sec. 7, NLRA).</i></p>
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The NLRB has long held that Section 7 “encompasses the right of employees to ascertain what wages are paid by their employer, as wages are a vital terms and condition of employment” (Jones & Carter, Inc. & Lynda A. Teare, 2012). The NLRB has also noted that “in fact, wage discussions among employees are considered to be at the core of Section 7 rights because wages ‘probably the most critical element in employment,’ are the ‘grist on which concerted activity feeds.’ (Jones & Carter, Inc. & Lynda A. Teare, 2012). In the Jones & Carter, Inc. case decision, the Administrative Law Judge (ALJ) further noted that over the years, the NLRB has consistently ruled that “an employer violates the Act when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights” (Jones & Carter, Inc. & Lynda A. Teare, (2012).

Gely and Bierman’s article details the three-part test applied in Section 8(a)(1) cases involving PSC rules.

*First, it must be determined that the PSC rule adversely affected the employees' Section 7 rights. Second, the employer must advance a "substantial and legitimate business reason" for her conduct if the rule adversely affected the employees' rights. Third, the Board must then apply a balancing test to determine whether the employees' Section 7 rights outweigh the employer's business justification. Such a finding will require the Board to conclude that the PSC rule and its application have violated Section 8(a)(1) Gely and Bierman, 2003, p. 126-127).*

Employer's may be able to defend their PSC rules if they can establish "a legitimate business justification for the rule" (Gely and Bierman, 2003). Gely and Bierman concluded that employers "have been rather timid in advancing possible justifications for the adoption of PSC rules" and have primarily argued that "PSC rules are necessary as a way of limiting jealousies and strife among employees" (Gely and Bierman, 2003, p. 129). Gely and Bierman concluded that reviewing courts and the NLRB have "consistently rejected this argument" (Gely and Bierman, 2003).

Gely and Bierman also provided a detailed review of cases where PSC rules were not contained in published documents but were orally and sometimes only informally communicated to employees. Their review included decisions from several appeals court decisions that "regardless of whether found in employment manuals or informally communicated to employees" PSC rules have been held to "inhibit employees' Section 7 rights to engage in concerted activities for mutual aid and protection" (Gely and Bierman, 2003, p. 128).

The NLRB v. Main St. Terrace Care Center case cited by Gely and Bierman, provides further details on how the courts have dealt with informally stated PSC rules:

*the employer contended that comments made by a manager to two employees that employees were not allowed to discuss their paychecks with anyone, nor disclose the pay raises that the employees were receiving, did not establish a rule sufficient to trigger a NLRA violation. The employer's argument was threefold: 1) the rule was not written or acknowledged; 2) the manager who made the comment did not have the authority to promulgate such a rule; and 3) the rule was not enforced. Id. at 538. The Sixth Circuit rejected all three arguments. Id. Regarding the first argument, the Court held that whether the rule is oral rather than in writing made no difference to the 8(a)(1) analysis. Id. The Court noted that "any rule prohibiting wage discussions, whether written or oral, has a tendency to discourage protected" activity, and is thus potentially illegal under Section 8(a)(1). Id. Similarly, the fact that the rule was not enforced was irrelevant, since in 8(a)(1) cases, "the actual effect of a statement is not so important as is its tendency to coerce." Id. at 539 (quoting NLRB v. Okun Bros. Shoe Store, Inc., 825 F.2d 102, 107 (6th Cir. 1987). (Gely and Bierman, 2003, p. 128).*

In March of 2014, the United States Court of Appeals for the Fifth Circuit issued its Flex Frac Logistics v. the NLRB decision. The decision was on Flex Frac's appeal of an NLRB order holding that Flex Frac's employee confidentiality policy "stymied employee discussions of wages" and was an unfair labor practice in violation of Section 8(a)(1) of the NLRA (NLRB, 2014, B). The NLRB found that Flex Frac Logistics confidentiality policy "was facially unlawful because employees would reasonably interpret the ban on disclosing personnel information and documents to prohibit discussing their salaries and wages with coworkers or non-employees (NLRB, 2014, B). While the case began with the 2010 firing of Flex Frac employee Kathy Lopez, the Fifth Circuit decision did not address her termination but focused on the confidentiality clause in a document that all Flex Frac employees were required to sign (Exhibit 1).

#### Exhibit 1

##### **Confidential Information**

*Employees deal with and have access to information that must stay within the Organization. Confidential Information includes, but is not limited to, information that is related to: our customers, suppliers, distributors;*

*Silver Eagle Logistics LLC organization management and marketing processes, plans and ideas, processes and plans, our financial information, including costs, prices; current and future business plans, our computer and software systems and processes; personnel information and documents, and our logos, and art work. No employee is permitted to share this Confidential Information outside the organization, or to remove or make copies of any Silver Eagle Logistics LLC records, reports or documents in any form, without prior management approval. Disclosure of Confidential Information could lead to termination, as well as other possible legal action (Flex Frac Logistics v. NLRB 2014).*

Another interesting point of law contained in this decision dealt with the issue of the employer's enforcement of the rule. In the Flex Frac Logistics decision the court, citing the 1998 NLRB decision in Lafayette Park Hotel, concluded that the employer's enforcement of the rule is not determinative and that the appropriate inquiry is "whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights" (Flex Frac Logistics v. NLRB, 2014).

The Flex Frac Logistics case is "the latest in a string of cases in which the NLRB is challenging company policies that it claims have a chilling effect" on employee Section 7 rights (Leonard, 2014). A series of cases associated with employer social media policies led to the issuance of three special reports by the NLRB on employer policies and rules that inhibit employee Section 7 rights. The third report, issued in May of 2012, focused on policies governing the use of social media by employees. In six of the seven cases examined in the report, the NLRB found a variety of provisions that were determined to be unlawful (Smith, 2012).

### **OTHER RECENT CASES**

In another recent NLRB case, a Hooters employee initiated a complaint after allegedly being terminated after complaining about a bikini contest. The investigation and hearing associated with the employee's complaint eventually led to a detailed review of the restaurant's mandatory arbitration agreement and other handbook policies (Smith, 2014, B). The initial complaint alleged that the company "maintained certain rules in an employee handbook and, a confidential information agreement, that infringed upon the employee's Section 7 rights in violation of Section 8(a)(1) of the Act" (Hoot Winc, LLC and Hanson, 2014). In challenging the employee's contention that she was terminated for alleged violation of her Section 7 rights, the employer alleged that the employee was terminated for allegedly violating various sections of the Hooters employee handbook including engaging in acts of violence, insubordination to a manager, off-duty conduct that negatively affected the company's reputation, and other activity that "Hooters reasonably believes represents a threat to the smooth operation, goodwill, or profitability of the business" (Hoot Winc, LLC and Hanson, 2014). The Administrative Law Judge assessed the following rules from the Hooters Handbook that allegedly interfered with, restrained, and coerced employees in the exercise of their Section 7 rights:

- (a) Remember: NEVER discuss tips with other employees or guests. Employees who do so are subject to discipline up to and including termination.*
- (b) Insubordination to a manager or lack of respect and cooperation with fellow employees or guests [might result in discipline up to, and including immediate termination.]*
- (c) Disrespect to our guests including discussing tips, profanity or negative comments or actions [might result in discipline up to, and including immediate termination.]*

- (d) *The unauthorized dispersal of sensitive Company operating materials or information to any unauthorized person or party [might result in discipline up to, and including immediate termination.] This includes, but is not limited to, recipes, policies, procedures, financial information, manuals or any other information in part or in whole as contained in any Company records.*
- (e) *Any other action or activity which Hooters reasonably believes represents a threat to the smooth operation, goodwill or profitability of its business [might result in discipline up to, and including immediate termination.]*
- (f) *Any off-duty conduct which negatively affects, or would tend to negatively affect, the employee's ability to perform his or her job, the Company's reputation, or the smooth operation, goodwill or profitability of the Company's business [might result in discipline up to, and including immediate termination.]*
- (g) *Employees shall not discuss the Company's business or legal affairs with anyone outside of the Company. Information concerning claims or lawsuits brought by the Company or against the Company shall be treated as confidential. Employees shall not discuss matters related in any way to litigation or claims. Any employee who violates this rule shall be subject to discipline up to and including termination of employment.*
- (h) *Information published on your social networking sites should comply with the company's confidentiality and disclosure of proprietary information policies. This also applies to comments posted on other blogs, forums, and social networking sites.*
- (i) *Be respectful to the Company, other employees, customers, partners, and competitors. Refrain from posting offensive language or pictures that can be viewed by co-workers and clients. Refrain from posting negative comments about Hooters or co-workers. In all cases, NEVER publish any information regarding a co-worker or customer (Hoot Winc, LLC and Hanson, 2014).*

The ALJ found that all of the rules in the handbook were either “overbroad” or “invalid” and restrictive of employees ability to exercise their Section 7 rights. With respect to the rule forbidding employees from discussing tips with each other, the ALJ ruled that “discussing tips between employees is essentially discussing wages” and that nothing is more basic “terms and conditions of employment than wages” and is unlawfully over broad (Hoot Winc, LLC and Hanson, 2014).

Policies designed to prohibit employees from engaging in “gossip” involving the personal lives of their co-workers or making negative remarks about their co-workers have also come under recent scrutiny of the NLRB (Gold and Lebel, 2014). In two cases, Hills and Dales General Hospital and Laurus Technical Institute, the NLRB administrative law judges concluded that the organization’s no-gossip policies interfered with their employees Section 7 rights (Gold and Lebel, 2014).

In the Hills and Dales General Hospital case, a three-member panel of the NLRB reviewed an NLRB Administrative Law Judge’s decision regarding portions of the Hospital’s Values and Standards of Behavior Policy. The “relevant part” of the policy that came under NLRB scrutiny stated that “employees will not make negative comments about our fellow team members, including coworkers and managers” and that “employees will represent [the Respondent] in the community in a positive and professional manner in every opportunity” (Hills and Dales General Hospital and Danielle Corlis, 2014).

In the Laurus Technical Institute case, another three member panel of the NLRB found that an employee’s termination for violating the company’s no gossip policy for discussing with

other employees concerns about job security was interference with the employee's Section 7 rights (Laurs Technical Institute and Joslyn Henderson, 2014). In the decision, the panel, citing its decision in Hoodview Vending Co., ruled "that an employee's conversations about job security with another employee, like those about wages, are inherently concerted" and that Laurus must "cease and desist" from maintaining or enforcing its overly broad no gossip policy and rule (Laurs Technical Institute and Joslyn Henderson, 2014).

## **RECOMMENDATIONS**

Employers in all private sector workplaces, with or without unions, should be alert to the NLRB's focus on protecting employee Section 7 rights. Policies and rules, whether published or unpublished that can be reasonably construed to prohibit protected Section 7 activity, are promulgated in response to union activity, or have been applied to restrict Section 7 activity may run "afoul of the NLRA" (Gold and Lebel, 2014). With the continued escalation of NLRB efforts to enforce Section 7 of the National Labor Relations Act, all private sector employers should be engaging in proactive measures to make sure that policies and rules, whether published or not, are ready to withstand what one law firm called the NLRB's continued "interventionist trend in invalidating work rules" (Winston & Strawn, 2014). Winston & Strawn, in addition to citing the NLRB's Administrative Law Judge decision in the Hoot Winc, LLC case, detailed other "recent developments" initiated by the NLRB that are designed to "expand its influence" (Winston & Strawn, 2014). Winston & Strawn described an NLRB agreement with the Occupational Safety and Health Administration (OSHA) that will allow OSHA to refer "time-barred complaints under the Occupational Safety and Health Act (OSH Act)" to the NLRB (Winston & Strawn, 2014).

While employers are wise to periodically review their policies and rules to make sure they are in compliance with new court decisions and new law, in light of the proactive approach to enforcement at the Federal level, employer efforts to maintain compliance are more important than ever. The range of policies and rules that have come under scrutiny in addition to pay secrecy policies, include confidentiality agreements, no-gossip policies, and attempts by employers to limit employee use of social media. A consistent problem for employers in regard to all of these that have come under NLRB scrutiny has been the use of overly broad wording in the construction of policies and rules that employers have created. Employers that want to draft policies and rules in these areas must start with an understanding of the basic NLRA prohibition that "employers can't maintain a rule or policy that reasonably tends to chill employees' ability to exercise their Section 7 rights" (Guiltinan, 2013). Employers are advised to remember the NLRB test utilized to determine whether a rule or policy "impermissibly chills" employee ability to exercise Section 7 rights - does the rule explicitly restrict Section 7 activity? Could it reasonably be construed to prohibit Section 7 activity; was the rule or policy developed in response to union activity; or was the rule or policy applied to restrict the exercise of Section 7 rights (Guiltinan, 2013). Employers should also remember that it is irrelevant as to whether the rule or policy that prohibits covered employees from discussing their pay has been formally or informally published. Whether it is an off the cuff remark by a supervisor or a CEO, if it could be construed by employees to not talk about any aspect of their compensation it could run afoul

of the NLRA. Given the current approach of current federal regulators, if the employer's policies and or rules come under NLRB scrutiny, the chance that an NLRB ALJ or the full board will determine that it restricts employee Section 7 activity is very high. For Federal government contractors, the OFCCP is currently developing regulations to implement President Obama's amendments to Executive Order 11246 prohibiting contractors and subcontractors from retaliating against covered employees who inquire about or discuss their compensation with fellow workers. Current and potential Federal government contractors are strongly advised to be alert for their publication and to prepare accordingly.

One final option to avoid coming under NLRB scrutiny with respect to a pay secrecy policy is to adopt an open pay policy. Two companies that have taken that approach are supermarket chain Whole Foods, and Buffer a new firm that develops apps for social sharing. Whole Foods is a large publicly traded firm (78,400 team members as of September 2013) and adopted their open pay policy in 1986 (Whole Foods, 2013). In addition to opening up salary data, Whole Foods gives "high-level access to the company's financial data" to all employees (Griswold, 2014). The objective of Whole Foods open policy is to help "create a high-trust organization, an organization where people are all-for-one and one-for-all" (Griswold, 2014). Whole Foods has been a member of Fortune magazine's "100 Best Companies to Work for in America" for 16 consecutive years, all "team members" are non-union, and the company considers their "team member" relations to be very strong (Whole Foods, 2013).

Buffer, a 15 employee start-up firm, publishes the "salaries of every employee as well as the formula they've devised for determining employee pay" (Johnson, 2014). Buffer's management believes that their open pay policy, referred to as "radical transparency", has been instrumental in attracting an increase in the supply of high quality applicants for the growing firm (Johnson, 2014).

The Whole Foods and Buffer approach to the pay secrecy issue are currently unique. As regulators, especially at the NLRB, continue to increase their scrutiny of pay secrecy policies and rules, employers are advised to assess their objectives regarding such policies. Employers may want to consider adopting the Whole Foods or Buffer solution to this problem considering the cost of complying given the current regulatory environment.

## REFERENCES

- Colella, Adrienne, Paetzold, Ramona L., Zardkoohi, Asghar, and Wesson, Michael J. (2007). Exposing pay secrecy, *Academy of Management Review*, Vol. 32, No. 1, 55 – 71.
- Flex Frac Logistics v. NLRB (2014). FLEX FRAC LOGISTICS, L.L.C.; SILVER EAGLE LOGISTICS, L.L.C., v. NATIONAL LABOR RELATIONS BOARD, In the United States Court of Appeals for the Fifth Circuit, Case: 12-60752 Document: 0051257055, Filed 3/24/2014.
- Gely, Rafael & Bierman, Leonard (2003). Pay secrecy/confidentiality rules and the National Labor Relations Act, *University of Pennsylvania Journal of Labor and Employment Law*, Vol. 6:1, 121 – 156.

- Gold, Kate and Lebel Philippe, (2014). Let them talk: the risks of no-gossip policies, downloaded 5/30, 2014 from <http://www.shrm.org/LegalIssues/FederalResources/Pages/no-gossip-...>
- Griswold, Alison, (2014). Here's why whole foods lets employees look up each other's salaries, downloaded 7/1/2014 from <http://www.businessinsider.com/whole-foods-employees-have-open-salaries-2014-3> .
- Guiltinan, Rosemary B. (2013). NLRB General Counsel: Careful with your code of conduct! New Hampshire Employment Law Letter, downloaded 6/20/2014 from <http://www.hrlaws.com/node/1221259>
- Hayes, Jeff & Hartmann, Heidi, (2011). Women and men living on the edge: Economic insecurity after the great recession, Washington, DC: Institute for Women's Policy Research, (IWPR # C386), downloaded 5/20/2014 from [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.iwpr.org%2Fpublications%2Fpubs%2Fretirement-on-the-edge-women-men-and-economic-insecurity-after-the-great-recession%2Fat\\_download%2Ffile&ei=J8t7U-2DBZfqoASq2YCQCw&usg=AFQjCNH0wqkN87MWw59XEowxwojlfWDezg&sig2=BzpEzPFG7RHKEPXveCSwKQ&bvm=bv.67229260,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.iwpr.org%2Fpublications%2Fpubs%2Fretirement-on-the-edge-women-men-and-economic-insecurity-after-the-great-recession%2Fat_download%2Ffile&ei=J8t7U-2DBZfqoASq2YCQCw&usg=AFQjCNH0wqkN87MWw59XEowxwojlfWDezg&sig2=BzpEzPFG7RHKEPXveCSwKQ&bvm=bv.67229260,d.cGU)
- Hills and Dales General Hospital and Danielle Corlis (2014). NLRB Decision and Order, Case 07-CA-053556, April 1, 2014.
- Hoot Winc, LLC and Hanson (2014). Hoot Winc, LLC and Ontario Wings, LLC d/b/a Hooters of Ontario Mills, Joint Employers, and Alexis Hanson, Jamie West, and Chanelle Pantich,
- Jones & Carter, Inc./Cotton Surveying Company and Lynda A. Teare, (2012). United States of America Before the National Labor Relations Board Division of Judges Atlanta Branch Office, Case 16-CA-27969, 5/19/2014.
- Johnson, Phil, (2014). Show us yours: How salary transparency is paying off for one company, downloaded 7/1/2014 from <http://www.itworld.com/mobile-wireless/403317/show-us-yours-how-salary-transparency-paying-one-company> .
- Leonard, Declan (2014). Company rule forbidding discussion of wages held illegal, downloaded 5/8/2014 from <http://www.shrm.org/LegalIssues/FederalResources/Pages/Forbiddi...>
- Laurus Technical Institute and Joslyn Henderspon (2014). NLRB Decision and Order, Case 10-CA-093934, June 13, 2014.

NLRB (2014, A). Jurisdictional Standards, downloaded 5/21/2014 from <http://www.nlr.gov/rights-we-protect/jurisdictional-standards> .

NLRB (2014, B). Fifth Circuit upholds NLRB order in Flex Frac Logistics case, downloaded 5/8/2014 from <http://www.nlr.gov/news-outreach/news-story/fifth-circuit-upholds-...>

Obama, Barack (2014). Executive Order – Non-retaliation for disclosure of compensation information, downloaded 5/8/2014 from <http://www.whitehouse.gov/the-press-office/2014/04/08/executive-order-non-retaliation-disclosure-compensation-information>

Sec. 7 NLRA. The National Labor Relations Act, downloaded 6/26/2014 from <http://www.nlr.gov/resources/national-labor-relations-act> . 1

Smith, Allen (2014, A). Executive order prohibits pay gag order among contractors, downloaded 5/8/2014 from <http://www.shrm.org/legalissues/federalresources/pages/no-gag-order-contractors-pay.aspx>.

Smith, Allen (2014, B). Bikini contest complaints snowball into successful NLRA claim, downloaded 5/30/2014 from <http://www.shrm.org/legalissues/federalresources/pages/contest-complaint.aspx> .

Smith, Allen (2012). NLRB Takes sledgehammer to social media policies, downloaded 8/16/2012 from <http://www.shrm.org/LegalIssues/FederalResources/Pages/NLRBSocialMediaPolicies.aspx> .

Watson, Beccah Golubock (2014). President Obama announces an end to pay secrecy gag rules for employees of federal contractors, downloaded 5/8/2014 from <http://www.nwlc.org/our-blog/president-obama-announces-end-pay-secrecy-gag-rules-employees-federal-contractors>

Whole Foods Market, (2013). Annual Report, downloaded 7/1/2014 from <http://www.wholefoodsmarket.com/sites/default/files/media/Global/Company%20Info/PDFs/WFM-2013-Annual-Stakeholders-Report.pdf> .

Winston & Strawn (2014). NLRB continues to expand authority over labor disputes, downloaded 8/1/2014 from <http://cdn2.winston.com/images/content/8/3/v6/83605/NLRB-Authority-LaborDisputes-5-28-14.pdf> .