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CLIENT ALERT NLRB ISSUES DECISION IMPACTING NON-ACUTE HEALTH CARE FACILITIES

Dear Client:

Today, the National Labor Relations Board (NLRB) issued a decision that adopts a new approach for determining what constitutes an appropriate bargaining unit in health care facilities (other than acute care hospitals). It overruled a long-standing precedent established in a 1991 case called Park Manor. In that case, the NLRB adopted a special test for bargaining unit determinations in nursing homes, rehabilitation centers, and other non-acute health care facilities. Since Park Manor, the NLRB and federal courts uniformly have found that only one bargaining unit is appropriate and must include all non-professional staff.

In Specialty Healthcare and Rehabilitation Center of Mobile, the NLRB found that certified nursing assistants at a nursing home may comprise an appropriate unit without including all other non-professional employees. It ruled that employees at such facilities will now be subject to the same "community-of-interest" standard that applies at other workplaces. Where an employer argues that a proposed unit inappropriately excludes certain employees, the employer will be required to prove that the excluded employees share "an overwhelming community of interest" with employees in the proposed unit. This standard will be very difficult, if not impossible, to meet.

Thus, the new ruling has significant impact for all nursing homes, rehabilitation centers and other non-acute healthcare facilities. Now, unions who believe that they cannot organize all non-professional staff most certainly will attempt to organize employers by focusing on individual departments or areas where there is sufficient interest. Nursing homes could likely end up with multiple unions, the result Park Manor intended to avoid.

Employers may want to prioritize employee relations and training related to same. If you have any questions or need any assistance, please contact us.

Sincerely,

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The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.

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