**Important News About Confidentiality in Workplace Investigations**

Since I know that many of you conduct or supervise workplace investigations, I wanted you to know about an important new case.

I've written before about the National Labor Relations Board's (NLRB) ruling that an employer's broad prohibitions against employees' discussions of workplace investigations would be a violation of the right of employees to organize under the National Labor Relations Act. This ruling in *Banner Estrella Medical Center* left all of us confused about how to handle confidentiality. Those of us who conduct investigations were in the habit of cautioning the complainant, accused and witnesses to avoid discussing ongoing investigations.

After *Banner*, however, we were left dancing a razor's edge since the NLRB indicated that an employer must determine and justify in *every individual situation* whether witnesses need protection, evidence is in danger of being fabricated, and there is a need to prevent a cover up.

Instead, after criticizing *Banner*, the D.C. Circuit Court of Appeals, in the Nov. 6, 2015 case of *Hyundai Am. Shipping v. NLRB*, ruled that "an employer's obligation to comply with [federal and state anti-discrimination statues and] guidelines requiring confidentiality may often constitute a legitimate business justification for requiring confidentiality in the context of a particular investigation or particular types of investigations."

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While the situation is still muddled, the case appears to make it much safer to request confidentiality from participants in investigations, as long as there's no threat of discipline involved. As always, however, the best course of action is to consult your experts in HR or legal before proceeding.

**Did You Know?**
We frequently conduct workplace investigations for outside counsel or in-house counsel. We also have a white paper with a legal update for those of you who do conduct investigations, available by request to lynne@workplacesthatwork.com

For a more thorough discussion of difficult conversations with employees, see our book: "*We Need to Talk* - Tough Conversations with Your Employee."
MORE INFO ABOUT WORKPLACE INVESTIGATIONS

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For additional information on this and many other workplace related topics go to Workplaces That Work website

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Lynne Eisaguirre
Workplaces That Work
3985 Wonderland Hill Avenue, Suite 106
Boulder, Colorado 80304
303-216-1020
lyne@workplacesthatwork.com
www.workplacesthatwork.com

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