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# E-Letter

August 9, 2006

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**ROSENTHAL** LLP

## To Our Clients:

The National Labor Relations Board has long held that healthcare employers have the right to prohibit the wearing of union-related buttons (or other insignia) in immediate patient care areas, but that restricting this conduct outside of immediate patient care areas is presumptively invalid. Under this rule, an employer could only rebut the presumption by showing that the restriction in non-immediate patient care areas was necessary to avoid a disruption to the employer's healthcare operations or that it would be a disturbance to the patients.

In a recent 2-1 decision, Sacred Heart Medical Center, (June 30, 2006), the NLRB ruled that it was *not* unlawful for the hospital to prohibit its nurses from wearing buttons which read "RNs Demand Safe Staffing," even when the buttons were worn in areas which were outside immediate patient care areas.

The Board explained that the buttons would be inherently disturbing to patients and their families, as a reasonable person would construe the demand for "Safe Staffing" as a claim that the hospital staffing levels were unsafe. The Board noted that the hospital's ban extended to only those hospital locations frequented by patients or their families.

The Board observed that its decision would not permit healthcare employers to adopt a ban on all "union-issue" buttons outside immediate patient care areas, and that its ruling applied only to those buttons which carried a message likely to cause unease and worry among patients and their families.

This decision permits healthcare employers to adopt commonsense restrictions on the wearing of inflammatory buttons in areas where patients and families are present, even if they are not patient care" areas. Nevertheless, we must caution that such restrictions should not be adopted without consulting with counsel.

**For greater clarification, you may contact any Shawe Rosenthal attorney.**

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