

Medical Interns and Residents Have Right to Organize Under The National Labor Relations Act

If you have questions regarding the rights of medical interns and residents under the Act, please contact the following authors of this alert, or your Vorys relationship attorney:

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A three-person panel of the National Labor Relations Board (“Board”) recently affirmed a prior decision finding that medical interns and residents are statutory employees with a right to organize under the National Labor Relations Act (“the Act”). This decision highlights the distinction between medical interns and residents, or house staff, and university teaching assistants and research assistants, who are not statutory employees for purposes of the Act.

In *St. Barnabas Hospital*, 355 NLRB No. 39 (2010), the Board denied the employer hospital’s request for review of the Regional Director’s Decision and Direction of Election among the employer hospital’s house staff. The Regional Director relied on the Board’s 1999 decision in *Boston Medical Center*, 330 NLRB 152, in which the board based its ruling that the doctors-in-training are employees on the fact that they receive compensation in the form of a stipend, workers’ compensation, paid vacations, sick leave, as well as health, dental and life insurance.

The hospital employer’s request for review asserted that *Brown University*, 342 NLRB 483 (2004) compelled the Board to re-evaluate its decision in *Boston Medical Center*. In *Brown University*, the Board determined that university teaching assistants (“TAs”) and research assistants (“RAs”) were not statutory employees. The decision in *Brown* was based on a factual analysis of what TAs and RAs actually do. Although refusing to engage in a full examination of the differences, the Board in *St. Barnabas* noted that it is apparent that the role of TAs and RAs at universities is different from that of house staff at medical centers. Declining to accept the employer hospital’s invitation to reconsider *Boston Medical Center*, the Board emphasized that *Boston Medical Center* has been the law for more than a decade, and no court of appeals has questioned its validity.

If there was any confusion after *Brown* as to the rights of medical interns and residents to organize under the Act, the Board in *St. Barnabas* has clarified that these rights in fact exist. Hospital employers should be aware of these rights.

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