



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 12
201 E Kennedy Blvd Ste 530
Tampa, FL 33602-5824

Agency Website: www.nlr.gov
Telephone: (813)228-2641
Fax: (813)228-2874

October 11, 2018



Re: Ally Financial, Inc.
Case 12-CA-211123

Dear [REDACTED]:

We have carefully investigated and considered your charge alleging that Ally Financial, Inc. (the Employer) has violated the National Labor Relations Act (the Act).

Decision to Partially Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted with regard to the portion of your charge alleging that the Employer unlawfully disciplined you pursuant to overly broad rules.

On August 18, 2017, the Employer issued a "Coaching on Attendance" to you, asserting that there were deficiencies in your attendance at work, including excessive tardiness and failing to adhere to your break schedule. In the coaching the Employer cited various lawful work rules concerning employee attendance. The Employer also cited a rule prohibiting employees from engaging in "any conduct or activity which is not in the best interest of the Employer," a rule that appears to be overly broad and to violate the Act because it significantly interferes with the exercise of employee rights under Section 7 of the Act to form, join, or assist a union, choose representatives to bargain with the employer on behalf of employees, act together with other employees for mutual aid and protection, and to choose not to engage in any of these protected activities.

An employer violates Section 8(a)(1) of the Act by imposing discipline pursuant to an unlawfully overbroad rule in two scenarios: (1) if the employee was disciplined for engaging in protected conduct; or (2) if the employee was disciplined for engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. *The Continental Group, Inc.*, 357 NLRB 409, 412 (2011). However, an employer does not violate the Act by disciplining an employee for conduct "wholly distinct" from the concerns underlying Section 7, even if the discipline is imposed pursuant to an unlawfully overbroad rule. For example, in *Continental Group*, the Board held that an employer did not violate the Act by disciplining an employee pursuant to an unlawfully overbroad "no access" policy because the conduct for which he was disciplined, sleeping on the employer's premises, was conduct "wholly distinct" from Section 7 concerns.

The evidence fails to establish that you engaged in protected concerted activity, or that you were engaged in activity otherwise implicating the concerns underlying Section 7 of the Act. In addition, the investigation shows that you were tardy and failed to adhere to your break schedule, as claimed by the Employer, and the Employer issued you the "Coaching on Attendance" based on your failure to adhere to its attendance rules. Rather, the evidence shows disciplined because of your tardiness and failure to adhere to the break schedule. In these

circumstances, there is insufficient evidence to show that the Employer violated the Act by issuing the coaching to you, notwithstanding the reference in the coaching notice to the allegedly overbroad rule prohibiting employees from engaging in “any conduct or activity which is not in the best interest of the Employer.”

For these reasons, I am refusing to issue a complaint regarding that allegation that the Employer unlawfully disciplined you. The portion of your charge alleging that the Employer maintains overly broad rules is being processed further.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency’s e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 25, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency’s website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than October 24, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 25, 2018**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 25, 2018, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



David Cohen
Regional Director

Enclosure

cc: Jonathan Spitz, Esq.
Ally Financial, Inc.
12850 Gran Bay Pkwy W
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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)