

**MEMORANDUM**

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To: Mental Health Clinicians, IBHS Unit

From: Latika Malkani, Esq., Siegel LeWitter Malkani



Date: November 12, 2015

RE: **Your Manager Cannot Pressure You to Disclose If You Will Strike and For How Long—Your Manager Also Can't Threaten You with Loss of Income If You Do Strike**

We understand that some managers have been holding one-on-one meetings with Clinicians and pointedly asking whether the Clinician will be striking and for how long. Mental Health Clinicians do NOT have to tell your managers this information, and we recommend that employees NOT disclose this information.

Other managers are trying to scare Clinicians from going out on strike, telling Clinicians that if they go out on strike for one week, then they won't be allowed to return to work after that week. Managers are also trying to make Clinicians feel guilty about going out on strike, telling them once you go on strike your patients will all be cancelled.

Striking is engaging in protected, concerted union activity. Federal law explicitly protects the right of all employees to strike, including doctors and other medical professionals. 29 U.S.C. § 157; *Montefiore Hospital and Medical Center*, 243 NLRB 681 (1979), enforced in relevant part, 621 F.2d 510, 514-15 (2d Cir.1980); *Bethany Med. Ctr.*, 328 N.L.R.B. 1094, 1094 (1999) (holding that the same standards of conduct apply to healthcare as to employees in other industries).

Under Section 8(a)(1) of the National Labor Relations Act (NLRA), it is unlawful for an employer to make any threat to any employee because that employee engages in protected, concerted activity. Striking employees have the right to make an unconditional offer to return to work, which must be honored by the employer. Managers who threaten employees who strike with any repercussions, including temporary job loss, are engaging in unlawful coercion, in violation of the NLRA.

We recommend that you do not respond to any questioning from Kaiser Managers about the strike. We also recommend that you make your own decision to participate in the strike, separate and apart from any threats that any manager may make to you. If a manager does threaten you, please report it to NUHW.