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**ALLEGHENY COUNTY LABOR COUNCIL  
REPORT OF LEGAL COUNSEL  
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From time to time a question arises as to whether employees or stewards may record images and/or pictures of faulty equipment or hazardous working conditions. Despite rules the employer may have prohibiting such, the Labor Board in a recent case of Whole Foods Market, Inc. found that “photography and audio or video recording in the workplace, as well as the posting of photographs and recordings on social media, are protected by Section 7 of the National Labor Relations Act if the employees are acting in concert for their mutual aid and protection, and no overriding employer interest is present. This protected activity may include recording images of protected picketing, documenting unsafe workplace equipment or hazardous working conditions, documenting and publicizing discussions about terms and conditions of employment, documenting inconsistent application of employer rules or recording evidence to preserve it for later use in administrative or judicial forums in employer-related actions.

While the Labor Board finds this type of activity protected, you should keep in mind that voice recording may be in violation of Pennsylvania and federal wiretap laws if the conversation that you are recording is only between two individuals and the other individual believes the conversation is just between the two of you; recordings where everyone is gathered around and there is no expectation of privacy is permitted. Those which are exclusively between two individuals, i.e., phone conversations, would not be permitted unless mutually agreed.

I know these issues come up from time to time and the recent NLRB case is very favorable, especially in cases where recordings are made of the production and/or operation of the facility unless the facility has some secret processes that are exclusive to them. As always, you should consult legal counsel prior to doing any recording.

Respectfully submitted,

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