UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FIORENZA DENTAL GROUP, LLC

and Case 25–CA–335779

LACY BAKER, an Individual

Brandon Magner and *Derek Johnson, Esqs.*,
for the General Counsel.
Michael Benefield, Esq.,
for Respondent.

Decision

GEOFFREY CARTER, Administrative Law Judge. The General Counsel asserts in this case that Fiorenza Dental Group, LLC (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by, primarily in late 2023 and early 2024: maintaining an overly broad "Non-Disclosure of Confidential Information" policy; making various statements that had a reasonable tendency to coerce employees in the exercise of their rights under the Act; and terminating charging party Lacy Baker because she engaged in protected concerted activities. As explained below, I have determined that Respondent violated the Act, but only by maintaining an overly broad "Non-Disclosure of Confidential Information" policy and by making certain coercive statements to employees. Respondent lawfully terminated Baker based on activity that is not protected under the Act.

STATEMENT OF THE CASE

The trial in this case was held in person on August 6–7, 2025, in Indianapolis, Indiana. On February 13, 2024, Lacy Baker filed an unfair labor practice charge in this case against Respondent. Baker subsequently filed an amended unfair labor practice charge on September 30, 2024. In a complaint and notice of hearing issued on March 25, 2025, and in a complaint amendment during trial, the General Counsel alleged that Respondent violated Section 8(a)(1) of the Act by:

(a) since about August 13, 2023, maintaining an unlawful work rule regarding non-disclosure of confidential information;

(b) on about November 27, 2023, interrogating employees about their protected concerted activities and instructing employees not to discuss wages with other employees;

(c) on about December 12, 2023, instructing employees not to discuss wages with other employees and instructing employees to report the protected concerted activities of other employees to Respondent;

(d) on about January 9, 2024, interrogating employees about their protected concerted activities;

(e) on about January 11, 2024, interrogating employees about their protected concerted activities, including discussions about wages; instructing employees not to discuss investigatory interviews with other employees; and threatening employees with unspecified reprisals because they failed to disclose the protected concerted activities of other employees;

(f) on about January 15, 2024, interrogating employees about their protected concerted activities;

(g) on about January 16, 2024, discharging employee Lacy Baker because she engaged in protected concerted activities and to discourage other employees from engaging in those or other concerted activities, and because she violated Respondent's work rule regarding non-disclosure of confidential information; and

(h) since about May 1, 2025, maintaining a revised unlawful work rule regarding non-disclosure of confidential information.[1]

Respondent, through a timely filed answer and arguments presented during trial, has denied the allegations that it violated the Act.

On the entire record,[2] including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel and Respondent, I make the following findings, conclusions of law, and recommendations.

[1] On the first day of trial, I granted the General Counsel's request to amend the complaint to allege that the May 1, 2025 revised work rule violated Section 8(a)(1) of the Act. (See GC Exh. 1(i); Tr. 23–27, 194–195.)

[2] The transcripts and exhibits in this case generally are accurate, but I hereby make the following transcript corrections: p. 106, l. 10: "Ally" should be "Natalie"; p. 120, ll. 18-19: "Go look" should be "Good luck"; p. 174, l. 17: Mr. Benefield was the speaker; p. 191, l. 16: "for" should be "4"; p. 242, l. 8: "I'll rule but I stand" should be "Overruled but answer"; p. 272, l. 5: "on your own" should be "under oath"; and p. 306, l. 18: Judge Carter was the speaker.

FINDINGS OF FACT[3]

I. JURISDICTION

Respondent, a limited liability company with an office and place of business in Greenwood, Indiana, has been engaged in the business of operating a dental office. During the calendar year ending on December 31, 2023, Respondent derived gross revenues in excess of $250,000 and purchased and received goods at its Greenwood, Indiana, facility that are valued in excess of $5000 and came directly from points outside the State of Indiana. Based on these admitted facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Management and Operations

Respondent began operating as a general dentistry practice in about January 2015. Owner and chief executive officer, Dr. Garrett Fiorenza serves as one of the dentists in the practice, while his wife, Natalie Fiorenza, serves as chief operating officer. Respondent admits, and I find, that Garrett and Natalie Fiorenza are Respondent's supervisors within the meaning of Section 2(11) of the Act and Respondent's agents within the meaning of Section 2(13) of the Act. (Tr. 11–12, 15–18, 62, 272–274.)

In addition to Garrett and Natalie Fiorenza, Respondent employs about three dentists, five front office coordinators, and 10 dental assistants. Front office coordinators' duties include answering the telephone, making appointments, and verifying insurance coverage. Dental assistants help the dentist with procedures, take x-rays, clean and polish patients' teeth, and take notes. Some of Respondent's dental assistants have an "expanded functions" capability, which means that they have been trained to place fillings in teeth. Respondent's dental assistants with that capability do not have a different job title. (Tr. 17, 28–29, 60–61, 196, 201–202, 274.)

B. Employee Handbook Confidentiality Policies

From at least August 13, 2023, to April 30, 2025, Respondent maintained an employee handbook that included both a "Non-Disclosure of Confidential Information" policy and a "Confidentiality Policy and Pledge." Those parts of the employee handbook stated as follows:

> **Non-Disclosure of Confidential Information**
>
> The protection of privileged and confidential information, including trade secrets, is vital to the interests and the success of Fiorenza Dental Group. Any information that an employee learns regarding Fiorenza Dental Group, its owners, employees, or patients as a

[3] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

result of employment with Fiorenza Dental Group that is not otherwise publicly available constitutes confidential information. The disclosure, distribution, electronic transmission or copying of Fiorenza Dental Group confidential information is prohibited. Employees may not disclose confidential information to anyone not employed by Fiorenza Dental Group or to other persons employed by Fiorenza Dental Group whose knowledge of such information is not needed. Such information includes, but is not limited to, the following examples:

- Compensation data.
- Program and financial information, including information related to patients.

Any employee who discusses confidential Fiorenza Dental Group information will be subject to disciplinary action (including termination). Furthermore, all employees are required to be up to date with current HIPAA training and regulations.

Discussions involving sensitive information should always be held in confidential settings to safeguard the confidentiality of information. Conversations regarding confidential information, particularly patient information, generally should not be conducted on cellular phones, or in elevators, restrooms, restaurants, or other public spaces.

Confidentiality Policy and Pledge

Any information that an employee learns about Fiorenza Dental Group or its members, employees or patients as a result of working for Fiorenza Dental Group, that is not otherwise publicly available, constitutes confidential information. Employees may not disclose confidential information to anyone who is not employed by Fiorenza Dental Group or to other persons employed by Fiorenza Dental Group who do not need to know such information to assist in rendering services. If an employee is unsure about whether to disclose confidential information to another employee, the employee should avoid disclosure until consultation with an owner of Fiorenza Dental Group occurs.

The disclosure, distribution, electronic transmission or copying of Fiorenza Dental Group confidential information is prohibited. Any employee who discloses confidential Fiorenza Dental Group information will be subject to disciplinary action, up to and including termination, even if he or she does not benefit from the disclosure of such information.

(Jt. Exh. 1 (pp. 8–9, 16); see also Tr. 19–20, 284–285.) Employees were expected to sign a form acknowledging that they received a copy of the employee handbook and understood its terms, and were also expected to sign the confidentiality policy and pledge. (See Jt. Exh. 1 (pp. 15–16); Tr. 21–22, 164, 285, 303–304.)

On May 1, 2025, Respondent issued and began maintaining a revised employee handbook. The May 2025 employee handbook includes a "Non-Disclosure of Confidential

Information" policy that is virtually the same as the version set forth above, except that the policy specifies the following examples of confidential information:

- Compensation data.
- Time off data.
- Program and financial information, including information related to patients.
- Clinical information.

The May 2025 employee handbook also includes a "Confidentiality Policy and Pledge" form that is identical to the version set forth above. (Jt. Exh. 2 (pp. 8–9, 16); Tr. 22.)

C. Dental Assistant Lacy Baker

In about June 2023, Lacy Baker began working for Respondent as a dental assistant. Baker had about 7 years of experience as a dental assistant at the time and also had expanded functions capability. Baker worked a part-time schedule, working 3 days a week from 8 a.m. to 5 p.m., for a total of 27 hours (generally 8 hours per day plus a paid 1–hour lunch, which occasionally was preempted for patient care). (Tr. 27–28, 60–64, 126; see also Tr. 91 (noting that Baker usually worked Mondays, Tuesdays, and Thursdays).)

On August 20, 2023, Baker signed a form to acknowledge that she received a copy of Respondent's employee handbook, and also signed the Confidentiality Policy and Pledge form provided at the end of the handbook. (Jt. Exh. 1 (pp. 15–16); Tr. 190–191.)

D. November 9, 2023: Discovery and Disclosure of Pay Rate Document

In about September 2023, front office coordinator Danielle Danehy was working on her office computer when she noticed a document listed under "recent files." Danehy opened the document (hereafter referred to as the "pay rate document"), which was not password protected or labeled as confidential,[4] and discovered that it was an Excel spreadsheet that had a separate tab for each of Respondent's employees and listed each employee's paid time off balance and hourly wage rate. (Tr. 69, 74, 133, 199–200, 203–206, 235; see also GC Exh. 2 (p. 2) (photograph of dental assistant Baker's tab in the pay rate document, and showing additional tabs labeled by each employee's first name).)

On November 9, 2023, dental assistant Baker was speaking with Danehy who, having recently looked again at the pay rate document, expressed frustration that her paid time off balance seemed incorrect in part because Respondent deducted time off from her balance in advance of an upcoming vacation. When Baker wondered if her own paid time off balance was

[4] The pay rate document was accessible on Respondent's office computers if front office coordinators entered their password to access the "One Drive" file system the computer. The pay rate document itself was not password protected and did not have a file name that expressly said the document was confidential. (Tr. 40–41, 43, 54, 56–57, 69, 200, 204–205.) Owner Fiorenza stored the pay rate document in a computer folder labeled "Dr. Fiorenza Only," but the evidentiary record does not establish that Danehy's computer display indicated that pay rate document was in that folder when the document appeared in the computer's "recent files" display. (See Tr. 54, 57, 205.)

accurate, Danehy mentioned that she had the pay rate document on the computer at her desk.[5] Danehy and Baker then went to Danehy's office computer and Danehy opened the pay rate document, which was still appearing on the computer as a recent file. Initially, Danehy attempted to click on her own tab to show Baker what was wrong with Danehy's paid time off balance. Danehy, however, accidentally clicked on the tab of a dental assistant who was also named Danielle (hereafter, dental assistant D.), which enabled Baker to see that dental assistant D. was earning $6 more per hour than Baker. After Danehy clicked on her own tab, she (with Baker observing for a few minutes) clicked on the tabs of most employees in the office, which enabled Baker to see that there was a very large range of pay gaps between employees.[6] Baker was then called away to see a patient. At Baker's request since she had not yet seen her own tab on the pay rate document, Danehy took a photograph of Baker's tab on the document and texted it to Baker. Baker and Danehy were aware that the pay rate document contained information that Respondent considered to be confidential. (Tr. 64–75, 128–129, 133, 168–169, 213–216, 235–237; GC Exh. 2 (Danehy's text message to Baker, including the photograph of Baker's tab in the pay rate document).)

Later on November 9, Baker telephoned and texted dental assistant A.S. to advise that she saw the pay rate document and observed that Respondent was paying dental assistant D. more than Baker and A.S. even though D. had less experience and started working for Respondent after Baker and A.S. Baker indicated that she felt unappreciated and planned to ask Respondent for a raise, and asked when A.S. planned to ask for a raise so A.S. and Baker could coordinate and avoid asking for raises in the same time period. Baker asked A.S. not to say anything to anyone else about the pay disparity issue. (GC Exh. 5 (pp. 1–2); Tr. 77–79, 128–129, 131, 145–146, 169–170, 187; see also Tr. 71–72.)[7]

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[5] Respondent did not provide employees with paystubs or other documents showing their paid time off balances. In addition, some of Garrett Fiorenza's practices regarding paid time off caused confusion. For example, if an employee used more paid time off than they had in their balance, Fiorenza would allow the employee to go into a negative balance and then have the employee pay off the negative balance by working additional hours or days beyond their usual schedule, or by having their wages reduced temporarily. (Tr. 65–67, 206–209.)

[6] Danehy testified that Baker took over the mouse/computer and was the one who clicked on other employees' tabs (including dental assistant D.'s tab). (See Tr. 214–215, 236–237.) I do not credit that part of Danehy's testimony. Danehy and Baker were looking at the pay rate document on Danehy's office computer and were trying to do so somewhat quickly since the lunch hour was ending and Danehy and Baker wanted to avoid displaying the pay rate document to other people in the office. (See Tr. 65, 72, 215.) Given those circumstances, I do not find it likely that Danehy would open the pay rate document and then have Baker take over with exploring the document, which Baker was seeing for the first time and was on Danehy's computer.

On the other hand, I do find that Baker was an active observer while Danehy clicked on other employees' tabs in the pay rate document to see their hourly pay rates. As a dental assistant, it was Baker who had an interest in learning the hourly rates of other dental assistants in the office. Danehy, as a front office coordinator, already knew that she was paid less than dental assistants and was more concerned with whether Respondent was calculating her paid time off accurately. (See Tr. 226.)

[7] In GC Exh. 5 and other exhibits that include text messages, some of the messages are cut short and end with the language "View all." For those messages, the full text of the message is provided on the following page in the exhibit. (See, e.g., GC Exh. 5 (p. 1) (text message that Baker sent at 3:54 p.m., including the "View all" language); id. (p. 2) (displaying the complete message that Baker sent at 3:54

E. November 10, 2023: Respondent Learns that Information in Pay Rate Document Has Been Disclosed

Notwithstanding Baker's request to not tell anyone else about the pay disparity issue, on about November 10, dental assistant A.S. told dental assistant Brittany Ford about the pay rate document and the fact that the document indicated that Respondent was paying a higher hourly rate to dental assistant D. than it was paying Ford. Ford, who already had a meeting scheduled that day with Garrett Fiorenza to discuss her pay and paid time off, told Fiorenza during that meeting that one or two employees (that she did not name) had seen the pay rate document and were sharing information from the document. Ford recommended that Fiorenza either lock or delete the pay rate document so no one else could find out about it. Fiorenza asked, "how the fuck did someone find that [document]?" (or something to that effect), and then said that he would take care of it. At some point during the meeting, Fiorenza agreed to restore Ford to 29 work hours per week instead of 26 hours. After meeting with Ford, Fiorenza moved the pay rate document to a file that could only be accessed with a password that only he knew. (GC Exh. 3 (pp. 1–2); Tr. 39–42, 246–251, 264–268, 274–275, 309.)

Later on November 10, Ford told Baker and A.S. that she informed Fiorenza that the pay rate document had been opened and reviewed. Upon learning that Baker and A.S. had been planning to ask Respondent for raises based on the pay disparity shown in the pay rate document, Ford apologized for telling Fiorenza that the pay rate document had been discovered and expressed the hope that the issue would die down and would not be on Fiorenza's mind when Baker and A.S. requested raises. Baker stated that Ford should not feel terrible for telling Fiorenza about the disclosure of the pay rate document but was unhappy with Ford's actions and expressed the concern that the person who looked at the document could lose their job. (Tr. 79–81, 251–252; GC Exh. 3; see also GC Exh. 5 (pp. 6–8) (Baker expressing concern to A.S. that Fiorenza might try to find out who accessed the pay rate document).)

F. Late November 2023: Baker asks Respondent for a Raise

After additional discussion with dental assistants A.S. and Ford about the pay disparity between dental assistants and how to ask for a raise, dental assistant Baker met with Garrett Fiorenza in about late November to discuss her pay. Fiorenza had previously notified employees that effective January 1, 2024, Respondent would stop paying employees for their 1–hour lunch break. During the meeting, Baker asked if there was a way to exempt her from that change (which would reduce her from 27 to 24 weekly paid hours), but Fiorenza said he could not do so. Baker then told Fiorenza that she knew that another employee was earning $6 more per hour than she was. When Fiorenza asked where Baker learned that information, Baker said that someone told her about it. Fiorenza then expressed frustration about the situation, saying that maybe he should tell everyone how much he makes so everyone could be mad about that.[8] Baker

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p.m.); see also Tr. 83–85.)

[8] Baker also testified that when she told Fiorenza that she knew another employee was making $6 hour more than she was, Fiorenza said, "Loose lips really sinks ships," and said that dental assistant Ford had recently used the pay rate document as leverage to get a pay increase. Fiorenza denied making those two statements. (Compare Tr. 88–89 with Tr. 290.) Since Baker and Fiorenza were equally credible in their testimony, I have given the benefit of the doubt to Respondent and have credited Fiorenza's

apologized for the circumstances and asked if there was anything that she could do to make herself more valuable to the dental practice. Fiorenza said that he would think about it and get back to Baker. (Tr. 46–47, 87–93, 129–130, 278; GC Exh. 5 (p. 10) (November 20 text messages in which Baker told A.S. about planning to speak to Fiorenza during the week of November 27).)

In about early December, Fiorenza and Baker met again, and Fiorenza advised that he could justify giving Baker a pay increase of about $4 per hour if she agreed to work until 7 p.m. on Thursdays instead of 5 p.m. Baker responded that she could not work that late because she needed to pick up her children from daycare and asked if there was anything else she could do to get a pay increase. Fiorenza said that he would think about it. (Tr. 90–91, 278; see also Tr. 93 (noting that after one of her meetings with Fiorenza, Baker expressed frustration to dental assistant T.G. about being a lower paid dental assistant and not being able to justify receiving a raise); GC Exh. 5 (pp. 11–15) (December 6 text messages from Baker to dental assistant A.S., in which Baker: indicated that she spoke with her husband about working later on Thursdays but was reluctant to make that change due to the impact that it would have on Baker's time with her children; and expressed unhappiness with being paid less than dental assistant D. and with Fiorenza's resistance to giving Baker a pay raise).)

G. December 12: Staff Meeting

On December 12, 2023, Respondent's employees met for a regularly scheduled all-staff meeting. After covering the standard meeting topics, owner Fiorenza advised employees that he left the pay rate document on a computer and someone had been snooping around and found it and shared it with other employees. Fiorenza said that talking about pay causes turmoil in the office and makes people angry and apologized for the pay rate document being disclosed. Fiorenza then asked anyone who had found, seen, talked about, or knew anything about the pay rate document to come forward and tell him.[9] (Tr. 94–96, 192, 218–220, 253, 262–263.)

H. December 2023/January 2024: Respondent's Investigation

Between December 2023 and January 16, 2024, Respondent (through Garrett and Natalie Fiorenza) investigated which employees accessed or viewed the pay rate document and which

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testimony that he did not make those two statements.

[9] Baker testified that while discussing the pay rate document during the meeting, owner Fiorenza reminded employees that they signed the employee handbook, which says that employees cannot discuss compensation data. Fiorenza denied mentioning the handbook during the meeting. (Compare Tr. 94, 188 with Tr. 290.) I have credited Fiorenza's testimony on this point because his testimony was equally credible as Baker's.

On a related point, Baker also testified that during the meeting, Fiorenza told employees not to discuss their compensation. Ford, however, did not recall Fiorenza making such a statement. (Compare Tr. 94–95, 143, 186–187 with Tr. 263.) Due to the conflict in Baker's and Ford's testimony, I do not find that Fiorenza explicitly told employees that they should not discuss their compensation with each other. That said, I do find (as stated in this section) that Fiorenza said that discussing pay causes turmoil in the office and makes people angry, because those remarks are consistent with Fiorenza's reaction in late November when Baker said she knew Respondent was paying another dental assistant $6 more per hour than she was receiving. (See Findings of Fact (FOF), sec. II(F), supra (Fiorenza reacted by saying that maybe he should disclose how much he earns so everyone could be mad about that).)

employees shared or discussed the content of the pay rate document with other employees.[10] As part of the investigation, Garrett and Natalie Fiorenza interviewed almost every employee one-on-one in the office that Garrett and Natalie Fiorenza shared. Among other questions, the Fiorenzas asked employees if they had any knowledge of the pay rate document and, if so, how they found out about the document and the names of people they talked about the document with. (Tr. 43–46, 49, 142, 149, 220–221, 274–278, 307, 309; see also Tr. 51–52 (Garrett Fiorenza testimony that in his view, an employee who views a document and understands its contents has "accessed" the document), 52–53 (Garrett Fiorenza testimony that he had never conducted an investigation into employee conduct before).)

In January 2024, Respondent spoke with dental assistants Baker and Ford, as well as front office coordinator Danehy as part of its investigation. Those interviews proceeded as follows:[11]

January 9: Baker went to Garrett Fiorenza's office and advised him that she had discussed her work schedule with her husband and determined that she could begin working until 7 p.m. two nights per week because Baker's husband could change his work schedule and pick up their children from day care those days. Baker asked Fiorenza to increase her hourly rate by $8 per hour in exchange for Baker working nights, and Fiorenza countered by offering a $5 per hour increase. Baker agreed and said that she would confirm with her husband that he could change his schedule to enable her to begin working nights.

Fiorenza then said that he needed Baker to tell him what the document she saw looked like and who told her about it. Baker denied seeing the pay rate document and said that she did not want to say who told her about the document. (Tr. 47–49, 97–98, 139–140, 277–278; see also Tr. 124 (explaining that Baker did not admit to having seen the pay rate document or report who told her about it because she was afraid of being terminated and did not want to get anyone in trouble).)

[10] There is some evidence in the record, albeit hearsay, that some employees expressed unhappiness and/or called for an investigation after learning in the December 12 staff meeting that employees had accessed and shared information about the pay rate document. (See Tr. 134–135, 144–145, 148, 254–256, 265; GC Exh. 4 (pp. 2–3).)

[11] Natalie Fiorenza did not testify during the trial. Garrett Fiorenza, meanwhile, did not dispute the majority of witness testimony about what he said during the interviews. To the extent that Garrett Fiorenza disputed a couple of narrow aspects of witness testimony about the interviews, I have credited his denials as equally credible to the contrary testimony provided by Baker. (See Tr. 289–290 (Fiorenza testimony denying that he mentioned during the January 9 meeting that an accountant suggested that Respondent have employees sign non-disclosure agreements, and denying that he told Baker to keep their January 11 conversation private); compare Tr. 98, 102–103, 187 (Baker testimony that Fiorenza made these remarks).) Accordingly, the findings below about what was said during employee interviews are undisputed, and I decline, as moot, the General Counsel's request (see GC Posttrial Br. at 16–17) that I draw an adverse inference based on Respondent's failure to call Natalie Fiorenza as a witness.

January 9: On January 9, Natalie Fiorenza met one-on-one with Danehy. N. Fiorenza said, "Look, we know it's you." Danehy then admitted that she found the pay rate document, and N. Fiorenza replied, "We just want to know what's going on. We're not here to fire anybody. We're just trying to get down to the facts." N. Fiorenza then asked Danehy for the names of anyone else involved in looking at and/or talking about the pay rate document. Danehy did not provide names to N. Fiorenza. (Tr. 101, 221–224, 227; see also Tr. 241, 277–279 (noting that Danehy initially, on an unspecified date, denied accessing or sharing the contents of the pay rate document).)

January 10: In a one-on-one meeting with Garrett Fiorenza, Danehy identified dental assistants Baker, Ford, and A.S., as the other employees who saw or knew about the pay rate document. (Tr. 223–225.)

January 11: Baker went to Garrett Fiorenza's office and confirmed that, starting in mid–February, she could begin working nights. Fiorenza then said, "I need to bring up this pay document again," and said that he really needed Baker to tell him who told her about the pay rate document. When Baker replied that she was not comfortable doing so, Fiorenza said that four people had come forward to tell him about the pay rate document, including the person who found the document. Baker suggested that Fiorenza could tell her a name and she could confirm whether or not that was the person who told her about the document. Fiorenza said that would not work, and Baker reiterated that she was not comfortable telling him who told her about the document, prompting Fiorenza to say, "Well, you don't have to tell me," but adding that it was bold of Baker to protect a coworker who was not a friend versus the person who determined Baker's pay and signs paychecks. (Tr. 98–102 (noting that this discussion was one-on-one and the office doors were closed); see also GC Exh. 6 (pp. 2–3).)

After a pause, the following exchange occurred:

Baker: I have a feeling I'm not going to be able to leave without telling you

Fiorenza: You've got the right idea.

Fiorenza: I have a very nervous employee in front of me with a very red face.

Baker: Yeah, because I'm really uncomfortable.

Fiorenza: You know who it was.

Baker: [Says that she really did not want to share the person's name because she did not want to get the employee fired because the employee was pregnant.]

Fiorenza: [Thanked Baker because that was the same person (Danehy) who came forward to confirm she found the document.]

(Tr. 49–50, 100–103, 278–279; see also Tr. 101 (noting that Danehy was the only employee in the office who was pregnant at the time).)

January 12: Natalie Fiorenza met one-on-one with Ford and asked four times if Ford saw the pay rate document. Ford answered "no" each time. When N. Fiorenza asked for names of employees involved, Ford said that Danehy clicked on the pay rate document, Baker saw the document and told A.S. about it, and A.S. told Ford. (Tr. 254, 256–257.)

January 15: Both Natalie and Garrett Fiorenza met with Ford in Fiorenza's office. Ford described the details about "how it went down" regarding the pay rate document. (Tr. 257–258; see also Tr. 258–259 (noting that after this meeting, Ford told Baker and A.S. that she "laid out everything" for Natalie and Garrett Fiorenza).)

January 15: In response to a text message from Natalie Fiorenza, Baker met with N. Fiorenza in Fiorenza's office. N. Fiorenza asserted that Baker had not been fully honest with Garrett Fiorenza and said that she hoped Baker would be more honest with her. N. Fiorenza then stated that she had many sources and believed that Baker saw the pay rate document and knew everyone's pay. Baker denied having seen the document and said she only spoke to A.S. and Ford about it, but after N. Fiorenza said she felt like Baker was still keeping information from her, Baker said that she saw the pay rate document, but only the tabs for her and one other employee. N. Fiorenza continued to assert that Baker was not being fully honest, and Baker responded that she did not have any additional information to provide. Towards the end of the discussion, N. Fiorenza asked about a photo that was taken of the pay rate document and was circulating in the office. Baker said that she was not aware of a photograph of the document (but forgot that she had a photograph of her tab of the document). (Tr. 103–106, 139–140; GC Exh. 7 (N. Fiorenza's January 15 text message to Baker); see also Tr. 107–108, 170, 182–183 (explaining that later that day, Ford reminded Baker about the photograph of Baker's tab in the pay rate document).)

Throughout this time period, Baker, A.S., Ford, and Danehy communicated about (among other topics) Respondent's investigation, the questions Respondent was asking, and the

responses employees were providing. (Tr. 107–108, 227–228, 258–259; GC Exhs. 4, 5 (pp. 16–18), 6 (pp. 2–4).)

I. January 16, 2024: Respondent Terminates Baker and Danehy

In the morning on January 16, Baker planned to clarify that she did have a photograph of the pay rate document, but only of her tab from that document. Accordingly, Baker texted Natalie Fiorenza about chatting sometime that day but N. Fiorenza was out of the office. (Tr. 107–108, 118–120; GC Exh. 7; see also GC Exhs. 4 (p. 1) (text message noting Baker's intention to tell Natalie and Garrett Fiorenza about the photograph), 6 (pp. 2, 4) (same).)

Later in the day, Garrett Fiorenza met with front office coordinator Danehy in his office. Fiorenza said that he knew Danehy was the employee who found the pay rate document, and Danehy explained that she did not search for private information on the computer but rather found the pay rate document by accident. Fiorenza then terminated Danehy for: copying the pay rate document that contained confidential information; sharing confidential information from the pay rate document with other employees (in violation of Respondent's confidentiality policy); and dishonesty during the investigation.[12] Fiorenza concluded by instructing Danehy to collect her personal items and leave the facility. Danehy did not have any prior disciplinary action during her employment with Respondent. (Tr. 36–37, 47–48, 64–65, 198–199, 229–234, 242, 279–281, 289, 294–297, 301–302; see also Findings of Fact (FOF), sec. II(B), supra (confidentiality policy).)

As Danehy was leaving, Fiorenza called Baker to his office. Once in the office, Baker took the initiative to admit that she spoke with Danehy about the pay rate document on November 9 and that Danehy showed her parts of the document (Danehy's, Baker's, and dental assistant D's tabs) such that Baker learned that dental assistant D. was making more money per hour than Baker. Baker added that she told A.S. and Ford about the pay rate document, and that

[12] During trial, Garrett Fiorenza initially testified that Respondent terminated Danehy (and Baker) only for dishonesty during the investigation and for copying the pay rate document and confidential information therein. Fiorenza denied relying on Respondent's confidentiality policy as a basis for the terminations. (Tr. 279, 285; see also Tr. 164–165, 306 (Fiorenza's and Baker's testimony that Fiorenza did not mention the confidentiality policy during the termination meetings).) I do not credit this part of Fiorenza's testimony because the evidentiary record shows that Fiorenza had additional reasons for terminating Danehy and Baker. In other parts of his testimony, Fiorenza admitted that Respondent terminated Danehy and Baker in part because they shared information about the pay rate document with other employees. (Tr. 280–281, 301–302, 307.) Further, in his affidavit, Fiorenza admitted that Respondent discharged Danehy and Baker not only for dishonesty, but also because Respondent has "a very strict Confidentiality Policy within the medical office, and information that is not general knowledge about employees is not to be shared. [The pay rate] document had [paid time off] and wage and hour information. The subject matter does not have common knowledge and, therefore, must be kept confidential." (Tr. 296–297, 305.)

I also note that I do not credit Fiorenza's attempt to distinguish between Respondent's confidentiality policy (which he denies relying on as a basis for terminating Danehy and Baker) and "general business norms" (which he testified served as part of the basis for the terminations). (Tr. 285, 297–298.) It suffices to say that Fiorenza admitted in his affidavit to relying on the confidentiality policy when terminating Danehy and Baker. (See Tr. 296–297.)

Baker did have a photo of the pay rate document, but only of her tab from that document. When Baker offered to show Fiorenza the photo, he responded that there was no need. Continuing, Fiorenza said that he and Natalie Fiorenza had come up with four reasons that would justify firing someone: opening a private document; viewing a private document; telling someone about a private document; and withholding information or lying. Fiorenza then terminated Baker for three of those reasons: viewing the pay rate document that contained confidential information; sharing confidential information from the pay rate document with other employees (in violation of Respondent's confidentiality policy); and dishonesty during the investigation.[13] Baker did not have any prior disciplinary action during her employment with Respondent. (Tr. 28–31, 34–35, 38, 47–48, 60, 64, 120–123, 152, 233–234, 279, 289, 294–297, 301–302; see also Tr. 260–261 (noting that Fiorenza also told Ford on January 16 about the four reasons that Respondent thought would justify terminating an employee); GC Exh. 6 (pp. 10, 13, 15) (January 16 text messages between Danehy and Baker mentioning that Garrett Fiorenza described four reasons Respondent could fire someone); FOF, sec. II(B), supra (confidentiality policy).)

At some point on January 16 after learning that both Danehy and Baker had been fired, Ford met with Garrett Fiorenza and tearfully told him that this (the terminations) was not how she saw things going down and that she had just been trying to do the right thing by reporting that the pay rate document had been discovered and disclosed. Garrett responded that he did not know why Ford was crying because he was not terminating her. Garrett added that he and Natalie Fiorenza had identified four reasons for firing employees and terminated Danehy and Baker because they had three of the four reasons. Respondent did not terminate Ford because she only had two of the four reasons. (Tr. 260–261; see also preceding paragraph (listing Respondent's four reasons for terminating an employee); Tr. 153–154, 243, 279–280 (Respondent did not terminate Ford, A.S., or any other employees besides Danehy and Baker in connection with the pay rate document discovery and disclosure).)

There is no evidence that Respondent has previously disciplined other employees for violating a provision of the employee handbook or for (without authorization) accessing, viewing, or discussing a document containing confidential information. Similarly, there is no evidence that Respondent has previously disciplined other employees for violating the confidentiality policy or for taking photographs. (Tr. 37, 53.)

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions — indeed,

[13] As previously noted, Fiorenza admitted to terminating Baker for these reasons. (Tr. 30–31, 34–35; see also fn. 12, supra).) I therefore give little weight to the fact that Baker did not list all three reasons in her testimony that Respondent provided for her termination. (See Tr. 122; see also GC Exh. 6 (p. 15) (January 16 text message from Baker in which she mentioned that Fiorenza gave various reasons for potentially terminating an employee but that she could not remember his exact words).)

nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.[14]

B. Did Baker Engage in Protected Concerted Activity?

One of the central issues in this case is whether Baker engaged in protected concerted activity in the time period between November 9, 2023 (when Baker saw the pay rate document and learned that she was being paid less than dental assistant D.) and her discharge on January 16, 2024. To address that question, it is useful to review the Board's definitions of "concerted activity" and "mutual aid or protection." As the Board has explained, to be protected under Section 7 of the Act, an employee's conduct must be both "concerted" and engaged in for the purpose of "mutual aid or protection." Although these elements are closely related, Board precedent makes clear that they are analytically distinct and also makes clear that the elements must be analyzed under an objective standard (such that an employee's subjective motive for taking action is irrelevant). *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 152–153 (2014). "Concerted" activity includes not only activity that is engaged in with or on the authority of other employees, but also activity where individual employees seek to initiate or to induce or to prepare for group action (including preliminary discussions towards that end), as well as individual employees bringing truly group complaints to the attention of management. The Board has recognized that the activity of a single employee in enlisting the support of their fellow employees for their mutual aid and protection is as much 'concerted activity' as is ordinary group activity. Id. at 153. By contrast, the concept of "mutual aid or protection" focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. Proof that an employee action inures to the benefit of all is proof that the action comes within the "mutual aid or protection" clause of Section 7, even if the employee who asks for support from coworkers in addressing an issue with management would receive the most immediate benefit from a favorable resolution of the issue. Id. at 153, 155–156.

I find that Baker engaged in concerted activity. First, the evidentiary record shows that starting on November 9, Baker had preliminary discussions with front office coordinator Danehy about whether Respondent was calculating their paid time off accurately, and also had preliminary discussions with dental assistant A.S. (who, in turn, looped in dental assistant Ford) about their compensation, which was lower per hour than dental assistant D.'s. While Baker and A.S. decided, as a first step, that they would each approach Garrett Fiorenza individually to seek raises, Baker's and A.S.'s discussions were "concerted" because they were acting together to

[14] Respondent contended in its posttrial brief that Baker was not a credible witness because she filed a claim with the Indiana Department of Labor and therein made an inaccurate statements about the documentation that Respondent provided about paid time off. (See R. Posttrial Br. at 9 fn. 2 and 11 fn. 4; see also Tr. 176–178).) I do not find that alleged inaccuracy, which has little if any bearing on the facts of this case, undermines Baker's overall credibility.

strategize about how to approach Respondent about their compensation. Second, the Board has held that employee wage discussions are "inherently concerted" and protected regardless of whether employees engaged in the discussions with the express object of inducing group action. This is so because "wages are a vital term and condition of employment and the grist on which concerted activity feeds," and because "discussions of wages are often preliminary to organizing or other action for mutual aid or protection." *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1206 fn. 10 (2014) (collecting cases; internal quotation marks omitted). Baker's activities are clearly covered by that Board precedent.

I also find that Baker's and her coworkers' concerted activities were for the purpose of mutual aid or protection. The evidentiary record is clear that Baker, Danehy, A.S., and Ford were seeking to improve their terms and conditions of employment, specifically regarding paid time off and compensation. To be sure, Baker and A.S. stood to gain the most from their efforts to obtain raises, but the fact remains that the pay disparity they were seeking to address would potentially benefit all employees. (The same is true as to Danehy's and Baker's preliminary discussions related to clarifying and possibly improving Respondent's practices regarding paid time off.)

With that stated, I turn to an additional question regarding whether Baker's activities were protected under the Act. The Board has held that an employee "may be lawfully disciplined or discharged for using for organizational purposes information improperly obtained from their employer's private or confidential records," because such activity does not qualify as protected activity. *LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 3 (2019), overruled on other grounds, *Stericycle, Inc.*, 372 NLRB No. 113 (2023); *Roadway Express*, 271 NLRB 1238, 1239–1240 (1984). In *Bullocks*, 247 NLRB 257 (1980), the Board considered the question of whether an employee engaged in protected concerted activity when she allegedly reviewed the performance evaluations of her coworkers. As part of its analysis, the Board provided instructive guidance about the distinction between innocent and wrongful access of confidential information, stating as follows in pertinent part:

> If [the employee] had *innocently* obtained the information contained in the employees' evaluations and then discussed them with her fellow employees, her conduct would . . . be both concerted and protected and her discharge, even if based on an honest belief that she had wrongfully obtained said evaluations, would be unlawful. However, if [the employee] had *wrongfully* obtained and copied the reviews herself, her activities would not be protected by the act and her discharge for engaging in such misconduct would not be unlawful.

247 NLRB at 258 (emphasis in original).

The established facts in this case show that on November 9, Baker and Danehy were discussing problems with Respondent's paid time off calculations when Baker expressed interest in reviewing her own paid time off balance and Danehy indicated that the information was available on a document on Danehy's office computer. Baker and Danehy then went to Danehy's desk, where Danehy opened the pay rate document and erroneously displayed dental assistant D.'s tab in the document instead of Danehy's own tab. Upon noticing that D. was

earning a higher hourly rate than Baker, Baker and Danehy reviewed the pay rate document tabs of several other employees in the office to see their hourly pay rates (Danehy clicked on the various tabs while Baker observed). (FOF, sec. II(D).)

Given those facts, I find that Baker's review of confidential information in the pay rate document was partially innocent and partially wrongful. Initially, Baker sought information about her own paid time off record and had no reason to know that Danehy would be opening a document that included confidential information about multiple employees, or that Danehy would be displaying any information besides Danehy's and Baker's. When Danehy opened the pay rate document and erroneously clicked on dental assistant D.'s tab, that inadvertently disclosed D.'s confidential information to Baker. Based on those circumstances, I find that Baker innocently learned that D. was earning a higher hourly rate than Baker. See, e.g., *A.L.S.A.C.*, 277 NLRB 1532, 1532 fn. 2, 1535–1536 (1986) (upholding finding that the employer unlawfully discharged employees because they engaged in protected concerted activity that was, in part, based on a salary list that was left at a copy machine that was available to various employees); see also *Vesta VFO, LLC*, 373 NLRB No. 10, slip op. at 2 (2024) (suggesting that an employee's accidental discovery of payroll information that was inadvertently placed in a client file was protected by the Act).)

Baker admitted, however, that after the inadvertent disclosure of D.s tab in the pay rate document, Baker and Danehy proceeded to review additional tabs in the pay rate document to find out the hourly pay rates of several other employees. I find that this further review of confidential information in the pay rate document was wrongful. After the initial inadvertent disclosure of D's information, Baker was aware that the pay rate document contained confidential information about other employees; indeed, she admitted as much during trial. Baker (with Danehy's assistance) nonetheless proceeded to review additional confidential information in the pay rate document. That activity is not protected by the Act.[15] See, e.g., *Cook County College Teachers Local 1600*, 331 NLRB 118, 119–122 (2000) (employee who knowingly shared confidential information about managers' home addresses without authorization did not engage in protected activity and therefore lawfully received a disciplinary warning); *Roadway Express*, 271 NLRB at 1239–1240 (finding that an employee was not engaged in protected activity when he took private business records from the company's files and, without authorization, made copies for the union; employer lawfully terminated the employee based on that activity); *Bullocks*, 251 NLRB 425, 426 (1980) (after a remand in 247

[15] My finding that the Act does not protect Baker's review of additional employee tabs besides D.'s tab stands even if I consider the fact that Respondent did not password protect the pay rate document or more clearly mark it as confidential (e.g., with a file name specifying that the document was confidential). I give more weight to the following facts: the pay rate document was not openly accessible to all employees; Danehy and Baker did not access the pay rate document on November 9 in the normal course of their work duties; and both Danehy and Baker testified that they knew the pay rate document contained confidential information. (FOF, sec. II(D); see also *Roadway Express*, 271 NLRB at 1239 (finding that the employer's bills of lading were confidential even though the employer kept the documents in unlocked files and the documents were not marked as confidential; confidentiality was established by the fact that the employee did not access the documents in the normal course of work activity, and by the fact that the files were kept in an office with limited access).)

NLRB 257, upholding judge's supplemental determination that the employer lawfully discharged an employee who wrongfully obtained confidential employee performance evaluations).)

C. Did Respondent Make any Statements that Violated Section 8(a)(1) of the Act?

In the complaint, the General Counsel alleges that Respondent made several unlawfully coercive statements to employees in late 2023 and early 2024. The statements generally arose during Respondent's investigation into the disclosure of the pay rate document and confidential information therein about employee hourly rates (a disclosure that, as noted above, was generally not protected under the Act). As discussed below, however, Respondent went beyond asking precise questions about the disclosure and made statements implicating employees' protected concerted activities. That lack of precision created a risk of violating Section 8(a)(1) of the Act.

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by making the following statements and/or engaging in the following conduct:

(a) On about November 27, 2023, interrogating employees about their protected concerted activities, including discussions of their wages

(b) On about November 27, 2023, instructing employees not to discuss their wages with other employees;

(c) On about December 12, 2023, instructing employees not to discuss their wages with other employees;

(d) On about December 12, 2023, instructing employees to report the protected concerted activities of other employees to Respondent;

(e) On about January 9, 2024, interrogating employees about their protected concerted activities;

(f) On about January 11, 2024, interrogating employees about their protected concerted activities;

(g) On about January 11, 2024, instructing employees not to discuss investigatory interviews with other employees;

(h) On about January 11, 2024, threatening employees with unspecified reprisals because they failed to disclose the protected concerted activities of other employees; and

(i) On about January 15, 2024, interrogating employees about their protected concerted activities.

2. Applicable legal standard

"The Board has long held that the standard to be used in analyzing statements alleged to violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial. The Board considers the totality of circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act." *Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3 (2023) (quotation marks and citations omitted); see also *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 10 (2022) (explaining that when analyzing alleged threats, the Board asks whether the threat would reasonably tend to interfere with, restrain, or coerce an employee in the exercise of the employee's Section 7 rights, and noting that the test is an objective one, not based on subjective coerciveness), enfd. 94 F.4th 67 (D.C. Cir. 2024).[16]

When deciding unlawful interrogation allegations, the Board applies a totality of the circumstances analysis to determine whether the interrogation was coercive. That analysis includes consideration of the following factors: whether the employer has a history of hostility toward or discrimination against union or protected concerted activity; the nature of the information sought; the identity of the interrogator and the interrogator's placement in the employer's hierarchy; the place and method of the questioning; and the truthfulness of the employee's reply to the questioning. *Garten Trucking LC*, 373 NLRB No. 94, slip op. at 1 (2024); see also *Rossmore House*, 269 NLRB 1176, 1178 & fn. 20 (1984), affd. sub nom *HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

3. Analysis – late November 2023 meeting

In about late November, dental assistant Baker went to Garrett Fiorenza to talk about her pay. During that discussion, Baker said that she knew another employee was earning $6 more per hour than she was, prompting Fiorenza to ask how Baker learned that information. Baker responded that someone told her about it. Fiorenza expressed frustration about the situation (that employees had learned of and were unhappy about differences in pay) but, in response to Baker's question about how she might make herself more valuable to the practice, promised to think about it and get back to Baker. (FOF, sec. II(F).)

[16] Respondent contends that to establish that it made statements that violated Section 8(a)(1) of the Act, the General Counsel needed to establish a prima facie case that: the employees were engaged in group activity, Respondent was aware of the group activity; and Respondent was motivated by anti-group animus. (R. Posttrial Br. at 2, 4.) It suffices to say that Respondent misstates the legal standard for whether an employer's statement violates Sec. 8(a)(1) of the Act. The prima facie case that Respondent (loosely) describes only applies to complaint allegations that an employer took adverse employment action against an employee in violation of Sec. 8(a)(1) (or (3) or (4)) of the Act. (See Discussion and Analysis, sec. (E)(2), infra.)

As a preliminary matter, I note that the General Counsel predicates its arguments about this discussion on Fiorenza having said "Loose lips sink ships" when Baker indicated that she learned from another employee that Respondent was paying her less than another dental assistant. (See GC Posttrial Br. at 25.) The General Counsel, however, did not sufficiently prove that Fiorenza made that remark, and thus I do not rely on it here. (See FOF, sec. II(F).)

With that stated, I do not find that Fiorenza instructed Baker not to discuss wages with other employees. Fiorenza certainly expressed frustration that information about wages had gotten out but the evidentiary record does not show that he told Baker to refrain from discussing the issue. Due to that failure of proof, I recommend that this complaint allegation (GC Exh. 1(e) (par. 4(a)(ii).) be dismissed.

I also do not find that Fiorenza unlawfully interrogated Baker during their late November meeting. There is no evidence that, at the time of the November meeting, Respondent had a history of hostility toward or discrimination against union or protected concerted activity (apart from maintaining an unlawful confidentiality policy, see Discussion and Analysis, sec. D, infra, but that falls short of establishing a history of hostility). The place and method of questioning was not remarkable under the circumstances, as it was Baker who went to Fiorenza's office to discuss her pay, and Fiorenza's question about how Baker found out another employee was earning a higher rate was brief and prompted by Fiorenza's surprise that Baker knew about the pay difference.[17] Baker responded to Fiorenza's question with a truthful (but vague) reply, and then the focus of the discussion returned to Baker's request for a raise. As for the fact that Fiorenza owned the practice and thus is at the top of Respondent's hierarchy, that factor does support a finding of coercion, but the weight of that factor is reduced by the fact that Baker initiated the conversation. I have considered the circumstances as a whole and do not find that Fiorenza's brief question about how Baker found out she was being paid less had a reasonable tendency to coerce employees in the exercise of their rights under the Act. Accordingly, I recommend that this complaint allegation (see GC Exh. 1(e) (par. 4(a)(i)) be dismissed. See *Rossmore House*, 269 NLRB at 1176, 1178 (finding no unlawful interrogation where a manager learned about a union organizing campaign through a mailgram, approached the employee who sent the mailgram to ask, "what's this about a union?," and stated that the employer would not like it and would fight it).

4. Analysis – December 12, 2023 staff meeting

During a regularly scheduled staff meeting on December 12, Garrett Fiorenza told employees that an employee was snooping around, found the pay rate document, and shared its contents with other employees. Fiorenza stated that discussing pay causes turmoil in the office

[17] I do not suggest here that a supervisor who is taken by surprise regarding union or protected concerted activity may say whatever they wish without running afoul of the Act. Depending on the facts and circumstances in each case, however, a supervisor who is caught off guard by such activity may lawfully ask a clarifying question or two. See, e.g., *Starbucks Corp.*, 373 NLRB No. 53, slip op. at 12–13 (2024) (finding that the employer did not unlawfully interrogate employees when a supervisor, immediately after being told about a new union organizing campaign, reacted to his surprise by asking employees in the same discussion why they felt they needed a union).

and makes people angry, and asked employees to come forward and tell him if they found, saw, spoke about, or knew anything about the pay rate document. (FOF, sec. II(G).)

The General Counsel asserts that through his comments in the meeting, Fiorenza instructed employees not to discuss their wages with coworkers and also instructed employees to come forward and report the protected activities of their coworkers. While I do not find that Fiorenza explicitly told employees not to discuss their wages, I do agree that Fiorenza's remarks about discussing wages were coercive. Specifically, by stating that discussing pay causes office turmoil and makes people angry, Fiorenza implicitly discouraged employees from engaging in that activity, which the Board has found to be protected. It is well established that the Act protects employees' right to discuss wages and compensation with each other and with third parties. See, e.g., *SW Design School, LLC*, 370 NLRB No. 77, slip op. at 2 (2021); *Cordua Restaurants, Inc.*, 368 NLRB No. 43, slip op. at 4–5 (2019), enfd. 985 F.3d 415 (5th Cir. 2021); *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). By communicating that employee discussions about pay would cause office turmoil and make people angry, Respondent communicated in veiled terms that employees should not engage in such discussions, and thereby violated the Act. See *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204–205 (2007) (employer violated Section 8(a)(1) of the Act by telling employee that she should refrain from speaking with coworkers about terms and conditions of employment because the discussions would hurt employee morale), enfd. 519 F.3d 373 (7th Cir. 2008).

I also find that Respondent ran afoul of Section 8(a)(1) of the Act when Fiorenza asked employees to come forward if, among other activity, they spoke about or knew anything about the pay rate document. That broadly phrased request: reinforced Fiorenza's message that Respondent discouraged employee discussions about wages; and invited employees to notify Respondent about their protected concerted activities, including employee discussions about wages and pay differences that (among other possibilities) arose from merely hearing about the pay rate document and the pay differences that it revealed. By requesting that employees come forward to report their protected concerted activities, Respondent communicated an instruction that had a reasonable tendency to coerce employees in the exercise of their Section 7 rights.

5. Analysis – January 9, 2024 meetings

On about January 9, dental assistant Baker went to Garrett Fiorenza's office to advise that she could begin working two nights per week. Fiorenza then raised the issue of the pay rate document, saying that he needed Baker to tell him what the document looked like and who told her about it. Baker falsely denied seeing the document and declined to say who told her about it. Also on January 9, Natalie Fiorenza called front office coordinator Danehy into her office for a one-on-one meeting. N. Fiorenza told Danehy that Respondent knew she was the one who found the pay rate document, and after Danehy admitted that was correct, N. Fiorenza asked Danehy for the names of anyone else involved in looking at and/or talking about the document. Danehy did not provide the requested names. (FOF, sec. II(H).)

I find that Respondent unlawfully interrogated both Baker and Danehy on January 9.[18] By January 9, Respondent had already demonstrated its hostility toward employees discussing wages following the disclosure of the pay rate document; indeed, during the December 12 staff meeting Respondent warned against that protected concerted activity and invited employees to report such activity. In the January 9 meetings with Baker and Danehy, Respondent sought (among other information) the names of employees who saw or spoke about the pay rate document. For Baker to answer that question accurately, she would have had to disclose the protected and concerted discussion that she and Danehy had on November 9 about paid time off, which was what led Danehy to tell Baker about the pay rate document. See *Phillips Petroleum Co.*, 339 NLRB 916, 918 (2003) (employee discussions about the employer's sick leave practices qualified as protected concerted activity). N. Fiorenza's question to Danehy about the names of anyone who spoke about the pay rate document also implicated protected concerted activity, as Danehy would have had to disclose the names of other employees (e.g. dental assistants A.S. and Ford) that spoke about the pay rate document and the issues that it raised but did not actually open or see the document. The fact that Garrett and Natalie Fiorenza are at the top of Respondent's hierarchy and questioned Baker and Danehy in one-on-one conversations added a measure of coercion, and not surprisingly, both Baker and Danehy declined to provide the names of coworkers who were involved in discussing the pay rate document (and the wage-related issues that the document raised). Baker also gave an untruthful reply to Garrett Fiorenza insofar as she denied having seen the document. See *Garten Trucking LC*, 373 NLRB No. 94, slip op. at 1–2 (explaining that an employee's refusal to provide information in response to interrogation can be an indicator that the interrogation was coercive). Since all of the relevant factors demonstrate that Respondent interrogated Baker and Danehy on about January 9 in a manner that was coercive, I find that Respondent violated Section 8(a)(1) of the Act through those interrogations.

6. Analysis – January 11, 2024 meeting

On about January 11, Baker went to Garrett Fiorenza's office to advise that she could start working nights in mid–February. Fiorenza then said that he needed Baker to tell him who told her about the pay rate document. Baker resisted doing so, and eventually Fiorenza said that Baker did not have to tell him but that it was bold of her to protect a coworker who was not a friend versus the person who determined Baker's pay and signs paychecks. When Baker responded that she felt like she could not leave the office without telling Fiorenza who told her about the pay rate document, Fiorenza agreed. Baker then indicated that the employee who told her was pregnant, thereby hinting that front office coordinator Danehy was the employee in question. (FOF, sec. II(H).)

The General Counsel contends that Respondent violated Section 8(a)(1) the Act in three ways during the January 11 meeting: unlawfully interrogating Baker; telling Baker not to discuss the investigatory interview with other employees; and threatening Baker with unspecified

[18] In its posttrial brief, the General Counsel only argues that Respondent unlawfully interrogated Baker on January 9. (GC Posttrial Br. at 22–23.) The complaint, however, alleges that Respondent unlawfully interrogated "employees" about their protected concerted activities on January 9. (GC Exh. 1(e) (par. 4(c).) I find that Respondent's January 9 interrogation of Danehy is covered by that complaint allegation.

reprisals because she resisted disclosing the protected concerted activities of other employees. I did not find that Fiorenza told Baker not to discuss the investigatory interview with other employees (see FOF, sec. II(H) (fn. 11), and thus recommend dismissal of that complaint allegation (GC Exh. 1(d)(ii)). As to the other allegations concerning January 11, I agree that Respondent violated the Act.

First, as part of the pressure that he applied during the meeting, Fiorenza responded to Baker's initial reluctance to say who told her about the pay rate document by explicitly telling Baker that it was bold of her to protect a coworker who was not a friend versus the person who determined Baker's pay and signs paychecks. Through that statement, Fiorenza warned Baker of the power difference between them and that continuing to resist talking about protected concerted activities could be detrimental to Baker's compensation or other terms and conditions of employment. By threatening Baker with unspecified reprisals if she continued to resist discussing the protected concerted activities of her coworkers, Respondent violated Section 8(a)(1) of the Act. See *Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3–4 (explaining that "warnings to employees regarding protected concerted activities convey a threatening message that engaging in such activities would put them at risk of adverse consequences and thus violate Section 8(a)(1)").)

Second, for the same reasons set forth above regarding Respondent's meetings with Baker and Danehy on January 9, I find that Respondent unlawfully interrogated Baker on January 11. Briefly, in a one-on-one meeting, Garrett Fiorenza pressured Baker to disclose who told her about the pay rate document and thus sought information that included Baker and Danehy's November 9 protected and concerted discussion about paid time off (which was when Danehy first told Baker about the pay rate document). Respondent's hostility towards employee protected concerted activities was well established at this point, and the pressure that Fiorenza applied ultimately resulted in Baker disclosing that she learned about the pay rate document from Danehy. That foundation, coupled with the fact that Fiorenza also threatened Baker with unspecified reprisals during the meeting, establishes that Respondent violated the Act when it interrogated Baker. See *Starbucks Corp.*, 373 NLRB No. 53, slip op. at 3 (2024) (evidence of other unlawful threats during an interrogation supports a finding that the interrogation itself was coercive); see also Discussion and Analysis, sec (C)(5), supra.

7. Analysis – January 15, 2024 meeting

On January 15, Baker met with N. Fiorenza one-on-one in Fiorenza's office in response to a text message from N. Fiorenza. N. Fiorenza asserted that Baker had not been fully honest in prior meetings and that Respondent believed Baker saw the pay rate document and knew everyone's pay. Baker initially denied seeing the document and admitted to speaking to dental assistants A.S. and Ford about it, but later admitted seeing the pay rate document but only the tabs in the document for her and one other employee. Near the end of the meeting, N. Fiorenza asked about a photograph of the pay rate document that Respondent believed was circulating in the office. Baker (mistakenly, since she forgot about the photograph that Danehy took of Baker's tab in the document) replied that she was not aware of a photograph of the document. (FOF, sec. II(H).)

I find that Respondent unlawfully interrogated Baker during the January 15 meeting. First, N. Fiorenza framed the meeting as a follow-up to previous (unlawful) meetings in which Respondent interrogated Baker about her protected concerted activities. In light of that framing and N. Fiorenza's assertion that Baker had not been fully honest in the previous meetings, Baker would reasonably infer that her protected concerted activities were still an issue for Respondent. Indeed, N. Fiorenza's statements and questions during the January 15 meeting prompted Baker to admit that she had spoken to coworkers about the pay rate document. Second, for the same reasons as previously stated, each of the relevant factors (Respondent's hostility toward protected concerted activity; the nature of the information that N. Fiorenza sought; N. Fiorenza's position near the top of the company hierarchy; the place and method of questioning; and Baker's false replies to questions) supports a finding of unlawful interrogation. (See Discussion and Analysis, sec. (C)(5)–(6), supra.)

D. Do Respondent's Confidentiality Policies Violate Section 8(a)(1) of the Act?

1. Complaint allegations

The General Counsel alleges that since about August 13, 2023, Respondent has maintained a "Non-Disclosure of Confidential Information" policy that interferes with, restrains, and coerces employees in the exercise of their Section 7 rights.

The General Counsel also alleges that since about May 1, 2025, Respondent has maintained an updated "Non-Disclosure of Confidential Information" policy that interferes with, restrains, and coerces employees in the exercise of their Section 7 rights.

2. Applicable legal standard

The Board requires the General Counsel to prove that a challenged rule has a reasonable tendency to chill employees from exercising their Section 7 rights. The Board interprets the rule from the perspective of an employee who is subject to the rule and economically dependent on the employer, and who also contemplates engaging in protected concerted activity. The employer's intent in maintaining the rule is immaterial. Instead, if an employee could reasonably interpret the rule to have a coercive meaning, the General Counsel will carry their burden, even if a contrary, noncoercive interpretation of the rule is also reasonable. If the General Counsel carries their burden, the rule is presumptively unlawful, but the employer may rebut that presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule. If the employer proves its defense, then the work rule will be found lawful to maintain. *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 2 (2023).

3. Analysis – Section 10(b)

Respondent argues that the complaint allegations concerning Respondent's confidentiality policies must be dismissed because those allegations are time-barred by the 6–month limitations period in Section 10(b) of the Act. (R. Posttrial Br. at 2, 12.) Dental assistant

Baker filed an unfair labor practice charge in this case on February 13, 2024, to assert that Respondent committed the following unfair labor practices:

> Since about January 9, 2024, the Employer has interfered with, restrained and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their protected concerted activities, including their discussions about their wages and [paid time off] and other terms and conditions of employment and in order to discourage other employees from engaging in such activities.
>
> On about January 16, 2024, the Employer discriminated against employee Lacy Baker by discharging her in retaliation for and in order to discourage protected activities including discussing wages, hours, and other terms and conditions of employment.

(GC Exh. 1(a).) Baker subsequently, on September 25, 2024, filed an amended unfair labor practice charge that included the following specific allegation about Respondent's confidentiality policy:

> Since about January 16, 2024, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by maintaining an unlawfully overbroad Non-Disclosure of Confidential Information Policy in its Employee Handbook.

(GC Exh. 1(c).)

The essence of Respondent's argument is that Baker missed the 6–month limitation period for filing an unfair labor practice charge about Respondent's confidentiality policy because she did not mention the confidentiality policy until September 25, 2024, more than 6 months after her termination. The Board has held, however, that an otherwise untimely allegation in an unfair labor practice charge may be included in the complaint if the allegation is "closely related" to allegations in a prior timely filed charge. To determine whether an otherwise untimely allegation is sufficiently closely related, the Board applies the three-prong test set forth in *Redd-I, Inc.*, 290 NLRB 1115 (1988), under which the Board: (1) considers whether the timely and untimely allegations involve the same legal theory; (2) considers whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the untimely charge; and (3) "may look" at whether a respondent would raise the same or similar defenses to both the timely and untimely allegations.[19] *Earthgrains Co.*, 351 NLRB 733, 734 (2007); see also *Redd-I*, 290 NLRB at 1116.

[19] In some cases, the Board has indicated that "closely related" complaint allegations traditionally must also have occurred within 6 months before the filing of the timely unfair labor practice charge. See, e.g., *Redd-I*, 290 NLRB at 1116 (discussing *NLRB v. Dinion Coil Co.*, 201 F.2d 484, 491 (2d Cir. 1952).) As I understand it, this rule is intended to limit aged allegations from finding their way into a complaint and does not bar "closely related" complaint allegations that arise *after* an unfair labor practice charge has been filed. In any event, the allegations in this case regarding the confidentiality policy occurred within 6 months of the unfair labor practice charge that Baker filed on February 13, 2024.

Having considered the legal standard that the Board described in *Redd–I*, I find that the complaint allegations about Respondent's 2023–2024 "Non-Disclosure of Confidential Information" policy are closely related to the allegations in Baker's February 13, 2024 unfair labor practice charge. In the February 13, 2024 charge, Baker explicitly alleged that Respondent unlawfully was engaging in conduct (including interrogating employees and discharging Baker) to discourage employees from discussing wages, paid time off, and other terms and conditions of employment. The complaint allegations about Respondent's 2023–2024 confidentiality policy involve the same legal theory, as the confidentiality policy was one of several methods that Respondent allegedly used to discourage employees from discussing wages.

The complaint allegations about the 2023–2024 confidentiality policy also arise from the same sequence of events as the allegations in Baker's February 13, 2024 charge. Specifically, the allegations in the charge that Respondent was discouraging employees from discussing wages and paid time off naturally raise questions about what Respondent was relying on as its basis for discouraging such discussions. Those questions inevitably lead to the confidentiality policy that Respondent had in effect at the time and the directives therein which instruct employees that they should not disclose compensation data in various circumstances.

As for whether Respondent would raise the same or similar defenses to the allegations in the February 13, 2024 charge as it would to the complaint allegations about the confidentiality policy, there is significant overlap in Respondent's defenses. As a central part of its defense, Respondent contends that it did not seek to broadly discourage employees from discussing wages based on its confidentiality policy or any other rationale. To be sure, the proof needed for this defense varies depending on the specific complaint allegation at issue (i.e., the legal standard for whether a policy is unlawful differs from the legal standards for whether an employer made unlawful statements or unlawfully terminated an employee), but the central theory is the same and I do not find that Respondent's ability to present a defense is hampered by the inclusion of complaint allegations about its 2023–2024 confidentiality policy.

Viewing these factors as a whole, I find the complaint allegation about the confidentiality policy that was in effect in 2023 and 2024 is closely related to the unfair labor practice charge that Baker timely filed on February 13, 2024.[20] I also find that the complaint allegation about Respondent's revised May 1, 2025, confidentiality policy is appropriately alleged in the complaint as an unlawful continuation of the 2023–2024 version of the policy.[21]

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[20] As an alternative ground for my finding that the General Counsel may proceed with its complaint allegation regarding Respondent's 2023–2024 confidentiality policy, I note that Respondent continued to maintain the confidentiality policy after discharging Baker and up to May 1, 2025. Thus, at a minimum, the September 25, 2024 amended charge permits the General Counsel to allege in the complaint that Respondent has maintained an unlawful confidentiality policy since about March 25, 2024 (6 months before the amended charge).

[21] In connection with this point, I note that the General Counsel filed an amendment to the complaint on the first day of trial (August 6, 2025) to include an allegation that Respondent's May 1, 2025 confidentiality policy is unlawful. (GC Exh. 1(i); Tr. 23–27, 194–195.) While this complaint amendment is closely related to Baker's February 13, 2024 charge for the reasons I have set forth above, I also note that the complaint amendment cures the lack of an underlying charge regarding the May 1, 2025 policy because the General Counsel timely served the complaint amendment on Respondent within the 6–month

4. Analysis – lawfulness of Respondent's confidentiality policies

Turning to the question of whether Respondent's 2023–2024 confidentiality policy was lawful, I find that the General Counsel demonstrated that the policy had a reasonable tendency to chill employees from exercising their rights under the Act. It is well established that the Act protects employees' right to discuss wages, hours, and other terms and conditions of employment with each other and with third parties. See, e.g., *SW Design School, LLC*, 370 NLRB No. 77, slip op. at 2; *Cordua Restaurants, Inc.*, 368 NLRB No. 43, slip op. at 4–5; *Rocky Mountain Eye Center, P.C.*, 363 NLRB 325, 325 fn. 1, 331 (2015); *Alternative Energy Applications, Inc.*, 361 NLRB at 1203. The 2023–2024 confidentiality policy, however, explicitly states that employees "may not disclose confidential information to anyone not employed by [Respondent] or to other persons employed by [Respondent] whose knowledge of such information is not needed," and explicitly lists "compensation data" and "program and financial information" as examples of information covered by the policy. (FOF, sec. II(B), supra.) Given those explicit directives and the lack of any exceptions for activities protected by the Act, an employee could reasonably interpret the 2023–2024 confidentiality policy to have a coercive meaning that employees may not discuss their wages, hours, or terms and conditions of employment with each other or third parties. The 2023–2024 confidential policy is therefore presumptively unlawful, and since Respondent did not prove that the policy advances a legitimate and substantial business interest that could not be advanced with a more narrowly tailored rule, I find that Respondent violated Section 8(a)(1) of the Act by maintaining the 2023–2024 policy. *Rocky Mountain Eye Center, P.C.*, 363 NLRB at 325 fn. 1, 331 (employer violated the Act by maintaining an overly broad confidentiality agreement that prohibited disclosure of information about physicians, other employees, or the internal affairs of the company); *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992) (employer violated the Act by maintaining a rule that prohibited employees from discussing their salaries), enfd. 977 F.2d 582 (6th Cir. 1992).

For the same reasons, I also find that Respondent violated Section 8(a)(1) of the Act by maintaining the May 1, 2025 version of the confidentiality policy. That version of the policy, like the 2023–2024 policy, explicitly states that employees may not disclose confidential information to each other or third parties. The May 1, 2025 policy lists compensation data and program and financial information as examples of such information, and adds "time off data" as another example of confidential information. (FOF, sec. II(B), supra.) Since the limitations in Respondent's May 1, 2025 confidentiality policy are materially the same as the unlawful limitations in Respondent's 2023–2024 policy (and indeed go a step further by listing time off data as another example of information covered by the policy) and Respondent did not establish a viable defense, I find that Respondent violated Section 8(a)(1) of the Act by maintaining the May 1, 2025 policy.[22] *Rocky Mountain Eye Center, P.C.*, 363 NLRB at 325 fn. 1, 331; *Automatic Screw Products Co.*, 306 NLRB at 1072.

10(b) period and Respondent did not show that it was prejudiced by the circumstances. See *DFWS, Inc. d/b/a The Guild San Jose*, 370 NLRB No. 47, slip op. at 1 fn. 1 (2020).

[22] I decline to address the General Counsel's argument that the May 1, 2025 confidentiality policy is also unlawful because it limits discussions about "clinical information." (GC Posttrial Br. at 19–20; see also FOF, sec. II(B) (showing that Respondent prohibited employees from discussing "clinical information" in the May 1, 2025 version of the policy).) Findings about that aspect of the May 1, 2025 policy will not affect the applicable remedy of requiring Respondent to rescind the unlawful

E. Did Respondent Violate Section 8(a)(1) of the Act When it Terminated Baker?

1. Complaint allegations

The General Counsel alleges that on about January 16, 2024, Respondent unlawfully terminated Lacy Baker because she engaged in protected concerted activities and/or because she violated Respondent's unlawful confidentiality policy.

2. Applicable legal standard

To prove that an adverse employment action violates Section 8(a)(1) of the Act, the General Counsel must demonstrate that: the employee engaged in activity that is "concerted" within the meaning of Section 7 of the Act; Respondent knew of the concerted nature of the employee's activity; the concerted activity was protected by the Act; and Respondent's adverse action against the employee was motivated by the employee's protected, concerted activity. *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15 (2018); *Lou's Transport, Inc.*, 361 NLRB 1446, 1447 (2014), enfd. 644 Fed. Appx. 690 (6th Cir. 2016); *Correctional Medical Services*, 356 NLRB 277, 278 (2010). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include, among other factors: the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6–7 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). If the General Counsel satisfies the initial burden of showing of discrimination, then the burden shifts to Respondent to present evidence, as an affirmative defense, demonstrating that it would have taken the same action even in the absence of the employee's protected activity. See *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997).

The Board has held that "discipline imposed pursuant to an unlawfully overbroad rule violates the Act in those situations in which an employee violated the rule by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. Nevertheless, an employer will avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee's conduct actually interfered with the employee's own work or that of other employees or actually interfered with the employer's operations, and that the interference, rather than the violation of the rule, was the reason for the discipline." The employer bears the burden of asserting the affirmative defense set forth in this legal standard, and bears the burden of establishing that the employee's interference with production or operations was the actual reason for the discipline. *Continental Group, Inc.*, 357 NLRB 409, 412 (2011); see also *Flex Frac Logistics, Inc.*, 360 NLRB 1004, 1005 (2014) (upholding the employer's decision to terminate an employee because, even though the employer relied in part on an overly broad work rule, the employee engaged in gross misconduct and any

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confidentiality policy and, if Respondent chooses, issue a new employee handbook that either does not include a confidentiality policy or includes a lawfully worded confidentiality policy.

chilling impact that the termination would have on employees' section 7 rights would be minimal).

3. Analysis under burden-shifting framework

When Respondent terminated dental assistant Baker on January 16, 2024, Respondent maintained that it properly did so because Baker viewed a private document (the pay rate document), shared the contents of the pay rate document with other employees, and was dishonest during Respondent's investigation. The General Counsel maintains that Respondent violated the Act when it terminated Baker, but ultimately the General Counsel failed to meet its burden of proof.

Although I agree that the General Counsel established several elements of its initial burden of proof (such as proving that Baker engaged in concerted activity and that Respondent knew about that activity), the General Counsel cannot show that Baker's concerted activities were protected by the Act. As previously noted, the Board has determined that the Act does not protect an employee who wrongfully obtains an employer's confidential records and discusses the confidential information therein with coworkers or a union. Baker's activities regarding the pay rate document are covered by that precedent, since Baker (with Danehy's assistance) knowingly reviewed the pay rate document to see the confidential hourly pay rates of several employees in the office. (See Discussion and Analysis, sec. (B), supra.)

In finding that Baker's activities are not protected, I have considered the fact that, initially, Baker's actions with the pay rate document were inadvertent insofar as Danehy accidentally displayed dental assistant D.'s hourly pay rate. Had Baker's review of the document been limited to that one inadvertent disclosure (along with Baker reviewing her own information and Danehy's information (with Danehy's consent)), then the General Counsel would have a stronger argument that Baker's activities were protected. It is undisputed, however, that after the initial inadvertent disclosure of D.'s hourly pay rate, Baker and Danehy knowingly and intentionally forged ahead with reviewing additional tabs in the pay rate document to see the confidential hourly rates of other employees. Since the Act does not protect that activity, the General Counsel cannot make an initial showing that Respondent terminated Baker for reasons that violate the Act.[23]

[23] I note that Respondent would have a valid affirmative defense even if the General Counsel cleared the hurdle of making an initial showing that Respondent terminated Baker for unlawful reasons. Specifically, since Baker wrongfully obtained confidential information from the pay rate document and the Act does not protect that activity, Respondent permissibly terminated Baker based on that unprotected conduct even if Baker engaged in some other forms of protected concerted activity.

In connection with this point, I recognize (as the General Counsel points out, see GC Posttrial Br. at 31, 38) that the Board has stated that there is a difference between an employer showing that it "could" have terminated an employee for certain misconduct and an employer showing that it "would" have done so, with proof of the latter ("would" have) required to establish a valid affirmative defense. See, e.g., *Absolute Healthcare d/b/a Curaleaf Arizona*, 372 NLRB No 16, slip op. at 4–5 (2022), enf. denied in part on other grounds, 103 F.4th 61 (D.C. Cir. 2024); *Structural Composites Industries*, 304 NLRB 729, 729–730 (1991). That distinction does not apply here, because I find that the evidentiary record shows that Respondent would have taken adverse employment action against Baker or any other employee for knowingly reviewing the company's confidential records without authorization. Indeed, Respondent

4. Analysis – was Baker's termination tainted by Respondent's reliance on the confidentiality policy?

I now turn to the General Counsel's alternative theory that Baker's termination is unlawful because Respondent relied on the unlawful confidentiality policy when it terminated Baker. As a preliminary matter, I agree with the General Counsel that Respondent relied, at least in part, on the confidentiality policy when terminating Baker. I did not credit Garrett Fiorenza's testimony that he terminated Baker based on general business norms; to the contrary, Fiorenza admitted in his affidavit that the confidentiality policy factored into his decision. (FOF, sec. II(I).)

With that stated, it does not automatically follow that an employer who relies on an unlawful policy when disciplining or terminating an employee has violated the Act. Instead, the General Counsel still must show that either the employee was engaging in protected conduct or engaging in conduct that otherwise implicates concerns underlying Section 7 of the Act. As the Board has described, where the employee conduct that led to disciplinary action is wholly distinct from activity that falls within the ambit of Section 7, it is not unlawful for an employer to rely on an overbroad rule to discipline an employee. *Continental Group, Inc.*, 357 NLRB at 412.

The circumstance that the Board described in *Continental Group* is what we have in this case. Specifically, while I have found that Respondent's confidentiality policies are unlawful and that Respondent relied on the 2023–2024 policy when it terminated Baker, the fact remains that the Act does not protect Baker's conduct (wrongfully obtaining confidential information). Since, consistent with Board precedent, Baker's conduct is not protected by the Act and does not sufficiently implicate the concerns underlying Section 7 of the Act, it was not unlawful for Respondent to terminate Baker based in part on the (overbroad) confidentiality policy. See Discussion and Analysis, sec. B, supra (describing Board precedent holding that the Act does not protect an employee's wrongful obtainment of confidential information).

In sum, I find that the General Counsel fell short with both of its theories for why Baker's termination was unlawful. I accordingly recommend that the complaint allegations concerning Baker's termination be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By, from about August 13, 2023 to April 30, 2025, maintaining an overly broad "Non-Disclosure of Confidential Information" policy, Respondent violated Section 8(a)(1) of the Act.

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believed that Baker and Danehy reviewed the confidential records of several employees and terminated both Baker and Danehy for engaging in that unprotected conduct. (See FOF, sec. II(H)–(I).) To the extent that Respondent did not produce evidence of comparators (other employees disciplined/terminated for similar infractions), I find that the lack of such evidence results from this being the first time that Respondent encountered a problem with employees improperly accessing confidential information.

3. By, on about December 12, 2023, discouraging employees from discussing their wages with other employees, Respondent violated Section 8(a)(1) of the Act.

4. By, on about December 12, 2023, telling employees to come forward to Respondent if they had spoken about a document that contained information about employee wages, Respondent violated Section 8(a)(1) of the Act.

5. By, on about January 9, 2024, interrogating employees about their protected concerted activities and the protected concerted activities of other employees, Respondent violated Section 8(a)(1) of the Act.

6. By, on about January 11, 2024, threatening employees with unspecified reprisals because they resisted disclosing the protected concerted activities of other employees, Respondent violated Section 8(a)(1) of the Act.

7. By, on about January 11, 2024, interrogating employees about their protected concerted activities and the protected concerted activities of other employees, Respondent violated Section 8(a)(1) of the Act.

8. By, on about January 15, 2024, interrogating employees about their protected concerted activities and the protected concerted activities of other employees, Respondent violated Section 8(a)(1) of the Act.

9. By, since about May 1, 2025, maintaining an overly broad revised "Non-Disclosure of Confidential Information" policy, Respondent violated Section 8(a)(1) of the Act.

10. The unfair labor practices stated in Conclusions of Law 2–9, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall require Respondent to rescind the unlawful Non-Disclosure of Confidential Information policy and, if it chooses, distribute a revised employee handbook that contains a lawfully worded policy. I shall also require Respondent to post an appropriate informational notice at its Greenwood, Indiana facility as described in the order below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

ORDER

Respondent, Fiorenza Dental Group, Greenwood, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an overly broad "Non-Disclosure of Confidential Information" policy.

(b) Discouraging employees from discussing their wages with other employees.

(c) Telling employees to come forward if they spoke about a document that contained information about employee wages.

(d) Interrogating employees about their protected concerted activities and/or about the protected concerted activities of other employees.

(e) Threatening employees with unspecified reprisals if they resist disclosing the protected concerted activities of other employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date that this order becomes final, rescind the May 1, 2025 Non-Disclosure of Confidential Information policy found in Respondent's employee handbook and, if it has not already done so, rescind the 2023–2024 version of the Non-Disclosure of Confidential Information policy.

(b) Furnish all current employees with an insert for the current employee handbook that (i) advises that the unlawful Non-Disclosure of Confidential Information policy has been rescinded, or (ii) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, Respondent may publish and distribute a revised employee handbook that either does not contain the unlawful Non-Disclosure of Confidential Information policy or includes a lawfully worded policy.

(c) Within 14 days after service by the Region, post at its Greenwood, Indiana, facility copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by

[25] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within

the Regional Director for Region 25, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at the facility at any time since August 13, 2023.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., September 22, 2025.

Geoffrey Carter
Administrative Law Judge

14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overly broad "Non-Disclosure of Confidential Information" policy.

WE WILL NOT discourage employees from discussing their wages with other employees.

WE WILL NOT tell employees to come forward if they spoke about a document that contained information about employee wages.

WE WILL NOT interrogate employees about their protected concerted activities and/or the protected concerted activities of other employees.

WE WILL NOT threaten employees with unspecified reprisals if they resist disclosing the protected concerted activities of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the May 1, 2025 Non-Disclosure of Confidential Information policy found in our employee handbook and, if we have not already done so, rescind the 2023–2024 version of the Non-Disclosure of Confidential Information policy.

WE WILL furnish all current employees with an insert for the current employee handbook that (i) advises that the unlawful Non-Disclosure of Confidential Information policy has been rescinded, or (ii) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, WE WILL publish and distribute a revised employee handbook that either does not contain the unlawful Non-Disclosure of Confidential Information policy or includes a lawfully worded policy.

Fiorenza Dental Group, LLC
(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Minton-Capehart Federal Building,
575 N. Pennsylvania Avenue, Room 238
Indianapolis, IN 46204-1577
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/25-CA-335779 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER.