



Employers Should Review Their Employee Handbooks Based on New Report From NLRB General Counsel

Client Advisories

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The General Counsel Office of the National Labor Relations Board (NLRB) has recently issued a comprehensive report addressing the legality of employer handbook policies under the National Labor Relations Act (NLRA). The NLRB has adopted a very aggressive approach in this area that continues with this recent report, which is replete with numerous examples of how the NLRB can find that an employer handbook violates the NLRA. The [full report is available here](#) and should be required reading for employers.

By way of background, the NLRA applies to both union and non-unionized workforces and generally protects an employee's right to discuss wages, hours, and other terms and conditions of employment, known as Section 7 rights. Based on NLRB case law, employers may not maintain any work rule if the rule has a "chilling effect" on such rights. The NLRB will find such a chilling effect if employees would "reasonably construe" the rule's language to prohibit their Section 7 rights under the NLRA.

Employee handbooks contain work rules and policies---many of them. And the NLRB has been targeting them for the past several years with a very broad interpretation. Consider

just the following handbook rule that the NLRB finds unlawful based on the new report:

- *"Be respectful to the company, other employees, customers, partners, and competitors."*
This is a common sense rule applicable to most workplaces and seemingly uncontroversial. Not so says the NLRB. It considers this rule "unlawfully overbroad" since some employees could construe this as "banning" protected criticism or protests regarding their employers. The report also concludes that other apparently innocuous rules and policies are likely unlawful as well, such as the following
- No "defamatory, libelous, slanderous or discriminatory comments about [the Company], its customers and/or competitors, its employees or management."

- “You must not disclose proprietary or confidential information about [the Employer, or] other associates (if the proprietary or confidential information relating to [the Employer’s] associates was obtained in violation of law or lawful Company policy).”
- “It is important that employees practice caution and discretion when posting content [on social media] that could affect [the Employer’s] business operation or reputation.”
- Do “not use any Company logos, trademarks, graphics, or advertising materials” in social media.
- “Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by email.”
- “[A]ssociates are not authorized to answer questions from the news media...When approached for information, you should refer the person to [the Employer’s] Media Relations Department.”
- A rule prohibiting “disrespectful conduct or insubordination, including, but not limited to, refusing to follow orders from a supervisor or a designated representative.”

Based on the NLRB’s very expansive interpretation of these rules, the NLRB believes they are not specific and narrow enough to avoid being construed by employees as prohibiting their rights to engage in protected activity under the NLRA, such as the right to complain about working conditions, to discuss unionization, or to strike. To date, the vast majority of these issues have not been fully litigated and the courts may take a different approach than that held by the NLRB. But, until a court does step in and resolve this dispute, employers need to be wary of language in employee handbooks that are overly broad and could run afoul of these general principles from the NLRB. As a result, all employers should review their handbooks to see if the language needs to be tailored to comply with the NLRB’s viewpoints.

If you have any questions about the NLRB’s guidance or have other questions about whether an employer handbook needs to be modified, please contact a member of the **Labor and Employment Department** of Archer in Haddonfield, N.J., at (856) 795-2121; in Philadelphia, Pa., at (215) 963-3300; in Princeton, N.J., at (609) 580-3700; in Hackensack, N.J., at (201) 342-6000; or in Wilmington, De., at (302) 777-4350.

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