

## **NLRB Attacks Employee Handbooks**

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On March 18, 2015, the NLRB issued Memorandum GC 15-04, a 30-page compilation of dozens of provisions in employee handbooks and policies it has found to be unlawful due to potentially infringing on the National Labor Relations Act's Section 7 rights (Section 7 covers employees' rights to complain about the terms and conditions of their employment). Although the NLRB's decisions are quite onerous for employers and will likely result in many employers finding their policies to be out of compliance, it is at least helpful to review these provisions summarized in one document for easier reference.

In rendering many of its decisions, the NLRB relied on a standard of what employees would "reasonably" understand as infringing on their rights, as further illustrated below. Arguments can certainly be made that in many of these cases, the NLRB took the "reasonableness" concept to illogical extremes. Here is one example provided by the NLRB:

- "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)"

The NLRB found this policy to be unlawfully overbroad because a reasonable employee would not understand how the employer determines what constitutes a "lawful company policy."

The Board also found the following policies unlawful because the policies did not clarify in express language that they did not include Section 7 communications:

- "Disclosing...details about [the Employer]";
- "Sharing of [overheard conversations at the work site] with your co-workers, the public, or anyone outside your immediate work group is strictly prohibited."
- "[I]f something is not public information, you must not share it."

With the statement immediately above, because it banned discussion of all non-public information, the Board concluded that employees would reasonably understand it to encompass such non-public information as employee wages, benefits, and other terms and conditions of employment.

With respect to the subject of employee conduct towards the company, the NLRB found the following policies to be unlawful because employees would construe them to ban protected criticism or protests regarding their supervisors, management, or the employer in general.

- "[B]e respectful to the company, other employees, customers, partners, and competitors."
- Do "not make fun of, denigrate, or defame your co-workers, customers, franchisees, suppliers, the Company or our Competitors."

- “Be respectful of others and the Company.”
- No “defamatory, libelous, slanderous or discriminatory comments about [the Company], its customers and/or competitors, its employees or management.”

The Board also found two policies regarding insubordination to be unlawful because they also included other conduct that it felt would reasonably be understood to include protected concerted activity:

- “Disrespectful conduct or insubordination, including, but not limited to, refusing to follow orders from a supervisor or a designated representative.”
- “Chronic resistance to proper work-related orders or discipline, even though not overt insubordination” will result in discipline.
- “Employees may not engage in ‘any action’ that is ‘not in the best interest of [the Employer].’”

The NLRB found the following to be unlawful because it did not contain a disclaimer that it did not apply to Section 7 rights:

- “Employees may not engage in ‘any action’ that is ‘not in the best interest of [the Employer].’”

The NLRB Memo also included summaries of unlawful policies regarding:

- Regulating conduct towards fellow employees
- Employee interaction and communications with third-parties
- Use of company logos, copyrights and trademarks
- Restricting photography and recording
- Restricting employees from leaving work
- Solicitation in the workplace

Unfortunately, these are only a few of the many examples provided by the NLRB. It is important for all employers to review their employee handbooks and other policies to make sure that they are compliant with the NLRB’s findings. In many of the examples in the Memo, the NLRB provides alternate ways to state the same concepts in a lawful manner. We are available to discuss any of these issues and to review employers’ existing handbooks for compliance.