

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

## BLOGS

Archives; Labor & Unions; Privacy & Information Security; Social Media & Technology; Workplace Policies

# No Photographs, Please

A recently-surfaced [Advice Memorandum from the National Labor Boards \(NLRBs\) Office of the General Counsel](#) opined that an employer social media policy prohibiting employees from photographing or video recording the employers facility unlawfully interfered with employees Section 7 rights. Before you run to revise any policies with a similar prohibition, we encourage you to take a deep breath and consider the consequences.

Many employers serve vulnerable populations, such as the elderly, the intellectually disabled, or those with mental health disabilities. In these contexts, HIPAA precludes employers and employees from publishing information that makes clients identifiable without their written authorization (which must be annually renewed). Other employers are in the business of developing novel technologies or systems. It may be necessary for these employers to have policies precluding photographs and video recordings in the workplace in order to demonstrate that they are taking necessary steps to adequately protect confidential and trade secret information, which itself is a challenging task in todays plugged-in world. For employers like these, the consequences of failing to have policies to protect information are probably worse than the consequences of failing to change policies based on the latest word from the NLRB.

Employers certainly need to stay abreast of the direction the NLRB is moving when it comes to social media policies. Keep in mind, however, that the NLRB generally analyzes specific policies at specific workplaces in their specific context. If your workplace is a hot bed of organizing activity or rife with disgruntled employees, keying in to the headaches that might be caused if the NLRB doesn't like your policies probably makes sense. On the other hand, if you have vulnerable clients, trade secret information to protect, or other well-thought-out reasons to limit photography or videography in the workplace, you may be justified in keeping policies in place that restrict the dissemination of protected or confidential information –at least for now.