



BLOGS

Archives; Labor & Unions; Privacy & Information Security; Workplace Policies

The Latest in Labor Law – New Handbook Rules for All Employers

The federal National Labor Relations Board (NLRB) is at it again. This time, the Board's general counsel has issued a March 18, 2015, [Report Concerning Employer Rules](#). The Report is a detailed document setting forth the NLRB's position on the types of employee handbook policies that comply with or run afoul of Section 7 of the federal National Labor Relations Act (NLRA). Under Section 7, all non-management employees have a legally protected right to engage in group activity aimed at improving their terms and conditions of employment. Many employers are surprised to learn that Section 7 rights apply in both unionized and *non-unionized* workplaces.

In light of the NLRB's new Report, it is time to dust off your employee handbook and check on whether your policies put you at risk of an unfair labor practice charge by the NLRB. As you engage in this process, you will find that, while sometimes helpful, the NLRB's new Report also includes maddeningly fact-specific and contextual policy analysis that often feels counter-intuitive. Based on our deciphering, here are a few specific takeaways for employers on the types of policies that, according to the NLRB, are either lawful or unlawful based on their chilling effect on the exercise of Section 7 rights:

Confidentiality Rules:

■ UNLAWFUL

- Expressly or implicitly prohibiting discussions of **terms and conditions** of employment, including but not limited to wages
- Expressly or implicitly prohibiting discussion of **employee** or **personnel information** given that this could chill discussions of employment terms and conditions

■ LAWFUL

- Broadly prohibiting disclosure of **unspecified confidential information**
- Prohibitions on disclosing **partner, vendor, customer or client data**, rather than coworker data

Employee Conduct Toward Company and Supervisors:

■ UNLAWFUL

- Requiring employees to be **respectful** of the Company or management, given that employees have the right to be negative about the company and its managers in connection with trying to improve work conditions



- Expressly or implicitly prohibiting employees from making statements that might **damage** the Company's business or reputation

- **LAWFUL**

- Prohibiting **rudeness** toward customers or clients
- Requiring **cooperation** with supervisors, coworkers, customers, and vendors

Employee Conduct Toward Colleagues:

- **UNLAWFUL**

- Expressly or implicitly prohibiting **online arguments, insults, or hurtful comments** about company management or other company employees
- Expressly or implicitly prohibiting the sending of **unwanted or inappropriate emails**, although limiting such emails to non-working time is permissible

- **LAWFUL**

- Expressly or implicitly prohibiting **coercing, intimidating, or harassing** behavior or statements

Employee Interaction with Third Parties:

- **UNLAWFUL**

- Banning employee interaction with the **press or government agencies**

- **LAWFUL**

- Requiring the Company's response to be made by **designated spokesperson(s)**

Use of Company Logos, Copyrights, Trademarks:

- **UNLAWFUL**

- Prohibiting the use of **logos or company graphics** in social media

- **LAWFUL**

- Requiring employees to **respect** copyright and trademark law

Photography and Recording Restrictions:

- **UNLAWFUL**

- **Completely banning** photography or recordings on job-site

- **LAWFUL**

- Requiring **pre-approval** for cameras to be allowed on job-site