

Does your Handbook hold up? The NLRB Offers Guidance for Employment Policies

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Having an employee handbook is an effective way to communicate the rules of the workplace and the employer's expectations of its employees. Employers not only use handbooks in day-to-day personnel management activities, but also for discipline and termination, and as a defense in litigated disputes. It is, therefore, important for those handbooks to be compliant with applicable state and federal authorities.

The National Labor Relations Board (NLRB) General Counsel recently issued a report to offer [guidance regarding handbooks](#), given the increase in the number of charges alleging unlawful handbook rules received by the office. The General Counsel issued the report "with the hope that it will help employers to review their handbooks and other rules, and conform them, if necessary, to ensure that they are lawful." This is coupled with the reminder that if a handbook rule has a chilling effect on employees' Section 7 activity, it will be found to be unlawful.

The report consists of two different parts: 1) identifying rules that the NLRB has found to be unlawful and why, and 2) rules specific to a recently settled unfair labor practice charge involving workplace rules.

At the outset, the report addresses confidentiality and reminds employers that employees have the right to discuss wages, hours, and other terms and conditions of employment with employees and non-employees alike. The report gives several examples of seemingly typical confidentiality provisions which have been found to violate Section 7. The report further identifies the provisions an employer may include to govern conduct between employees, employees and supervisors, and employees and third parties. Likely in response to many employers adding social media and electronic communications provisions to their handbooks, the report addresses appropriate rules for protecting employer logos, copyrights and trademarks.

The second part of the report provides specific examples of a national restaurant chain's actual handbook provisions, and then a discussion as to how the NLRB interprets such provisions.

Employers should take note of these specific examples of what the NLRB deems to be "lawful" and "unlawful" policies. Even those employers with non-union workplaces can benefit from the guidance set forth therein.

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