

## NLRB General Counsel Provides Employer-Friendly Guidance on Work Rules

On June 6, 2018, the NLRB General Counsel ("GC") issued a memorandum ([GC 18-04](#)) to all Regional Offices directing them to recognize certain types of workplace rules as generally lawful. This guidance should provide employers with greater assurance and clarity regarding acceptable workplace rules under the National Labor Relations Act ("NLRA").

The GC advised Regions that, going forward, "ambiguities in [workplace] rules are no longer interpreted against the drafter, and generalized provisions should not be interpreted as banning all activity that could conceivably be included." This position is a significant departure from previous Board jurisprudence, which had prohibited workplace rules that *could possibly* be interpreted as covering Section 7 activity.

Employers who have been understandably hesitant to prohibit certain employee conduct should review and comply with the new guidance. Most useful to employers, the memorandum specifically states that the following types of rules are generally lawful:

- Civility Rules. *E.g.*, rules prohibiting rude, condescending or otherwise socially unacceptable behavior; negative or disparaging comments about company employees; or offensive language.
- No-Photography Rules and No-Recording Rules. *E.g.*, rules prohibiting the use of cameras to capture images or video; recording conversations, phone calls, images, or company meetings with any recording device without prior approval.
- Rules Against Insubordination, Non-cooperation, or On-the-job Conduct that Adversely Affects Operations. *E.g.*, rules prohibiting "being uncooperative with supervisors...or otherwise engaging in conduct that does not support the Employer's goals and objectives" and insubordination.
- Disruptive Behavior Rules. *E.g.*, rules prohibiting boisterous and other disruptive or disorderly conduct; or "creating discord" with clients or fellow employees.
- Rules Protecting Confidential, Proprietary, and Customer Information or Documents. *E.g.*, rules prohibiting the disclosure of confidential financial data or other non-public information regarding business partners, vendors, or customers.



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- Rules Against Defamation or Misrepresentation. *E.g.*, rules prohibiting defamatory messages; or any misrepresentation of the company's product, services, or employees.
- Rules Against Using Employer Logos or Intellectual Property. *E.g.*, rules forbidding any use of company logos, trademarks, or graphics without prior approval.
- Rules Requiring Authorization to Speak for Company. *E.g.*, rules prohibiting any employees from commenting to media on behalf of the company, without authorization.
- Rules Banning Disloyalty, Nepotism, or Self-Enrichment. *E.g.*, rules prohibiting conduct that is "disloyal...competitive, or damages to the company," that "interferes with one's judgment concerning the Company's best interests," or that "exploits one's position with the Company for personal gain."

The GC cautioned that although these rules should be considered "facially lawful," they may still be unlawful in their application. For example, they cannot be relied upon to prohibit otherwise protected NLRA activity, such as the discussion of wages or working conditions between employees. In addition, the GC reiterated that rules specifically prohibiting protected NLRA activity, or rules promulgated in response to union organizing, continue to be unlawful.

The GC's Memorandum follows up on the NLRB's decision in *The Boeing Co.*, 365 NLRB No. 154 (Dec. 14, 2017), which we previously reported on [here](#). In *Boeing*, the Board established a new test for evaluating workplace rules, by balancing the nature and extent of the potential impact on NLRA rights with any legitimate business-related justifications for the rule.

Per the GC's Memorandum, the NLRB appears to be placing a greater emphasis on the employer's right to maintain workplace discipline and productivity through facially neutral rules, policies, and handbook provisions. As a result, we anticipate fewer unfair labor practice charges filed against employers so long as they comply with this new guidance. Please consult with your Hanson Bridgett labor attorney to determine how this guidance could affect your company.

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