
National Labor Relations Board's General Counsel Issues Memorandum Regarding Handbook Rules

By Thomas P. Brady / Mar 20, 2015

On March 18, 2015, Richard Griffin, Jr., the National Labor Relations Board's general counsel issued Memorandum GC 15-04 which "presents recent case development arising in the context of employee handbook rules." He issued the report "to offer guidance on [his] views of this evolving area of labor law, 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."

Section 7 of the National Labor Relations Act (Act) permits employees to engage in concert activity for the purpose of collective bargaining or other mutual aid or protection. Citing to *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), Mr. Griffin noted that the mere maintenance of a work rule may violate employees' Section 7 rights if the rule has a chilling effect on employees' Section 7 activity. The Board may find a rule unlawful if the employees would reasonably construe the rule's language to prohibit Section 7 activity.

In the memorandum, the General Counsel discusses several categories of rules giving examples of rules he found to violate the Act and, in some cases, rules that were found lawful. The following rules are discussed in the memorandum:

- Rules regarding confidentiality;
- Rules regarding employee conduct towards the employer and supervisors;
- Rules regarding conduct towards fellow employees;
- Rules regarding employee interaction with third parties, including media policies;
- Rules restricting the use of the employer's logos, copyrights and trademarks;
- Rules restricting photography and recording in the workplace;
- Rules restricting employees from leaving work; and
- Rules on conflict-of-interest.

After discussing these rules, Mr. Griffin examines a recent settlement the general counsel reached with Wendy's International LLC. He explains that he found the following rules violated the Act:

- Social media policy;
- Conflict-of-interest policy;
- Company confidential information policy;
- Employee conduct policy;
- No distribution/no solicitation policy; and
- Cell phone, camera and recording device policy.

He then discusses rules adopted by Wendy's, as part of the settlement, which he found lawful. The lawful rules included:

- Handbook disclosure policy;
- Social media policies;
- Conflict of interest policy;
- Company confidential information policy;
- Employee conduct policies;
- No distribution/no solicitation policy; and
- Use of telephone, cell phone, camera phone and recording devices policy.

Conclusion

The memorandum provides examples of rules that the general counsel has concluded are unlawful and in most cases explains why the rule violated the Act. It also provides examples of rules the general counsel found lawful. We recommend that employers review their handbooks and company policies to determine if the policies include language the general counsel has found unlawful. If unlawful policies are discovered, the employer should consult with experienced labor and employment counsel to rewrite the rules to avoid possible unfair labor practice charges. You can find Memorandum GC 15-04 at [Report of the General Counsel Concerning Employer Rules](#).

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