



OCTOBER 2012

NLRB Decisions Rule Several Common Workplace Policies Violate the NLRA

In a flurry of recent decisions, the National Labor Relations Board (NLRB) has ruled that several common workplace policies and rules can violate the National Labor Relations Act (NLRA) because they can reasonably tend to chill employees in the exercise of their Section 7 rights, including the right to discuss terms and conditions of employment with third parties and co-workers. See [Costco Wholesale Corp.](#), 358 NLRB No. 106 (2012); [TT&W Farm Products, Inc.](#), 358 NLRB No. 125 (2012); [Karl Knauz Motors, Inc.](#), 358 NLRB No. 164 (2012). Specifically, the NLRB has found the following policies unlawful:

1. Prohibiting unauthorized posting, distribution, removal or alteration of any material on company property
2. Prohibiting employees from discussing private matters of members and other employees, including topics such as, but not limited to, sick calls, leaves of absence, FMLA call-outs, ADA accommodations, workers' compensation injuries, and personal health information
3. Stating that sensitive information such as membership, payroll, confidential, financial, credit card numbers, social security numbers, or employee personal health information may not be shared, transmitted, or stored for personal or public use without prior management approval
4. Prohibiting employees from sharing confidential information such as employees' names, addresses, telephone numbers, and e-mail addresses
5. Prohibiting employees from electronically posting statements that damage the company or any person's reputation
6. Prohibiting leaving company premises during a working shift without management permission
7. Prohibiting employees from walking off the job
8. Engaging or participating in any interruption of work
9. Providing a rule stating that no one should be disrespectful or use profanity or any other language that injures the image or reputation of the company

A key factor that the NLRB considered in these decisions was that many rules are overbroad and arguably cover protected activity, such as speaking with co-workers about their terms and conditions of employment, complaining about management and supervisors, or engaging in a

work stoppage. Careful drafting of work rules, as well as the inclusion of specific definitions and examples of prohibited conduct, may remedy the NLRB's concerns.

MORE INFORMATION

Based on the NLRB's recent initiative to police employee handbooks, employers, both union and nonunion, may wish to review their existing rules to ensure that their policies do not interfere with the protected rights of their employees under the NLRA. To receive additional information regarding employment policies or how to respond to an allegation that a work rule or policy violates the law, please contact one of the following attorneys:

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