

XpertHR Identifies 11 Employment Policies You Might Think Are Legal But the NLRB Might Not

Social Media, Personal Electronic Devices and Confidentiality Policies Explained

New Providence, NJ (May 19, 2015) -- Work rules and employee handbooks are under increasing scrutiny as the National Labor Relations Board (NLRB) continues its sweeping enforcement effort against rules deemed overbroad and infringing on an employee's Section 7 rights, says a new [XpertHR whitepaper](#) on NLRB policies and handbook provisions. Merely having an unlawful policy "on the books" may be sufficient for the NLRB to find an employer in violation of the National Labor Relations Act (NLRA)—even if the policy is well intentioned or has never been enforced—especially if it has a "chilling" effect on an employee's protected activity.

In light of the NLRB's March 2015 report, which clarifies recent NLRB decisions on employee handbook rules, XpertHR encourages employers to review their employment policies and handbooks to determine if they are compliant with the NLRB's rules and interpretations. One emerging issue is social media. Now that social media has essentially become today's "watercooler" and an accessible forum for employees to discuss workplace conditions, the NLRB is aggressively enforcing policies that either explicitly prohibit or may be reasonably read to restrict an employee's right to use social media to comment about the company's business, policies or employees.

For example, employers can prohibit employees from making negative comments about customers in any social media. However, they cannot prohibit employees from posting photographs taken of employees on company premises or at company events. (e.g., posting a photo of employees carrying a picket sign in front of the workplace or of unsafe work conditions).

Another NLRB area of concern is policies restricting photography, recording and personal electronic devices. Employees have the right to photograph and make recordings in furtherance of their protected concerted activity, such as photographing safety violations or documenting unfair labor practices committed by the employer. On the other hand, a policy regulating photography and recording will be found lawful if its scope is appropriately limited. For example, an employer may prohibit employees from recording in areas that would violate patient privacy or other sensitive information.

"Employment policies and employee handbooks are a critical and effective way for employers to convey to employees the manner in which they should conduct themselves in the workplace," says Melissa Gonzalez Boyce, Legal Editor, XpertHR. "However, even an employer's well-intentioned rules that prohibit employees from engaging in protected conduct, or can be reasonably construed to prohibit such activity, are unlawful."

The following are 11 policies that employers must review to determine whether they run afoul of the NLRB's recent guidance:

1. Social Media Policy
2. Policies Restricting Photography, Recording and Personal Electronic Devices
3. No Distribution/No Solicitation Policy
4. Confidentiality Policy
5. Policies Regarding Employee Conduct Towards Management
6. Policies Regarding Employee Conduct Toward Coworkers
7. Policies Regulating Employee Conduct Toward Third Parties
8. Policies Restricting Use of Company Logos, Copyrights and Trademarks
9. Policies Restricting Leaving Work
10. Conflict of Interest Policies
11. Handbook Disclosure Provisions

A free whitepaper explaining lawful and unlawful employment policies is available from XpertHR.com.

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Editor's Note:

Melissa Gonzalez Boyce, Legal Editor, XpertHR is available for interview.

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