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Time to Reevaluate Employee Handbooks

Spring is often a time for some cleaning, and a new report from the National Labor Relations Board (“NLRB”) should provide you an additional incentive to clean up your employee handbook.

In fact, the NLRB’s report from the General Counsel’s office is the most comprehensive review we’ve seen from them on common employer policies. In their report, the office has provided an explanation of what is unlawful and what is lawful from its perspective.

The NLRB has long been concerned with protecting the rights of non-union and union employees on topics such as wages, work hours, and general conditions of employment. This most recent analysis by the NLRB finds many policies unlawful because they are too vague or do not specify that they are not intended to infringe upon employee rights under the National Labor Relations Act. Sometimes the distinctions may seem trivial.

For example, it found unlawful a policy that prohibited employees from making “insulting, embarrassing, hurtful or abusive comments about other company employees online,” and instructed employees to “avoid the use of offensive, derogatory, or prejudicial comments.” Yet, it found lawful a policy that prohibited “threatening, intimidating, coercing, or otherwise interfering with the job performance of fellow employees or visitors.”

Much of this guidance involves creative interpretations of policies or an assumption that employees will not engage in lawful protected activities out of fear that a handbook does not say they can. Each word in a policy is being examined as well as the absence of words which could clarify the policy. Even the location of where a restriction or policy is placed in relation to other policies was used to infer overreaching by an employer.

This new guidance addresses policies on: confidentiality; social media; employee conduct toward supervisors, other employees, vendors, customers and the Company itself; the use of company logos or other intellectual property; restrictions on the use of cameras in the workplace; and conflicts of interest.

It is important to note that when the NLRB finds a policy to be unlawful due to vagueness or overreaching, it overturns discipline imposed by employers in enforcing the policy. Indeed,



it has even required the employer to reinstate the discharged employee with back pay or to erase any record of the discipline. Employers have also been ordered to revise their policies and to post notices that their policies were unlawful and that the discipline has been retracted.

For employers, this report is another important reminder to review your policies – even the ones that appear “neutral” on their face. Employers need to carefully scrutinize their policies to assess the risks associated with the language that currently exists or take steps to modify, revise, or prepare new language to address policies that are being attacked by the NLRB.

Questions or Assistance:

If you have questions regarding either of these changes, please contact Daniel Schwartz at dschwartz@goodwin.com or (860) 251-5038 or Gary Starr at gstarr@goodwin.com or (860) 251-5501.

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