

New NLRB Guidance on Employee Handbooks

On June 6, 2018, the NLRB's new General Counsel, Peter B. Robb, issued guidance regarding the Board's current policies on Employee Handbooks, expanding on the Board's recent decision in *The Boeing Company*, 365 NLRB No. 154 [Dec. 14, 2017], and taking a more employer-friendly approach.

The Board has specified three categories of rules:

Category 1: Rules that are Generally Lawful to Maintain. These rules include rules against rudeness, photography, recording of conversations, insubordination, roughhousing, nepotism, and defamation of individual colleagues, as well as rules protecting confidential information and the use of company logos. These rules could be interpreted as outlawing certain protected conduct; however, the Board found that employees are unlikely to be chilled by these rules, so the rules are generally lawful as written.

Category 2: Rules Warranting Individual Scrutiny. These rules include broad conflict-of-interest and confidentiality rules, rules prohibiting disparagement of the

employer or the making of false or inaccurate statements, rules banning off-duty conduct that might harm the employer, and rules regulating speaking to the media or using the employer's name. Case-by-case evaluations determine whether Category 2 rules transgress an employee's rights under the NLRA. If so, further evaluation is required to determine whether the transgression outweighs the justification for such rules.

Category 3: Rules that are Unlawful to Maintain. These rules enforce confidentiality with respect to employee wages and working conditions and "ban[sic] membership in an outside organization that might interfere with work" (potentially applying to unions). Barring a special circumstance, these employee policies are unlawful.

What Does This Mean For You?

When creating employee policies and reviewing employee handbooks, employers should consider whether the policies fall into one of the above three categories. In dealing with employee concerns and defending employee lawsuits, employers must consider what actions are necessary based on the category of the rule in question.