

NLRB Shows No Signs Of Releasing Its Death Grip On Employer Handbooks

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Calling the analysis of handbook rules an “evolving area of law” (*i.e.* whatever the NLRB says is proper on that particular day), NLRB General Counsel Richard Griffin has recently issued a report offering guidance on the propriety of various handbook policies. The 30-page report can be found [here](#). Griffin noted the uptick and continuing barrage of complaints about handbook policies, and reiterated that the NLRB took such charges seriously. Remember, it matters not whether your shop is union or non-union when it comes to handbooks – the NLRB’s decisions apply to both. What is generally at issue when determining whether a handbook policy is lawful is whether the handbook language chills activity under Section 7 of the National Labor Relations Act, which protects workers who engage in concerted activity for their mutual benefit relating to terms and conditions of employment (*e.g.*, wages and hours). Although Section 7 activity is rarely explicitly banned, the buzzword is whether employees might “reasonably construe” a policy to bar such activity. The application of this standard is where the rubber meets the road, and recent NLRB rulings have left employers frustrated and bewildered as the agency has seemed determined to go out of its way to interpret rather mundane and routine policies broader than common sense would allow in order to find them unlawful. For example, the report reiterates that policies against “disrespectful” or “rude” conduct on the part of employees will generally be stricken because an employee might construe this language as a bar to discussing wages or conditions of employment. As one client recently asked me, “Does the NLRB believe that such topics can only be discussed while yelling and screaming?” At bottom, this report serves as a reminder that the NLRB is serious about handbook enforcement and that the heat shows no signs of abating. If your handbook hasn’t been vetted in a while, there is no better time to dust it off. The Death Star will not suffer any rebel activity, and you don’t want to be standing on Alderaan when your outdated handbook gets noticed.

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