

Second Time's The Charm? NLRB To Reconsider Lawfulness Of Restaurant's Work Rules Under New Standard

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Employers received great news from the National Labor Relations Board (NLRB) late last year when the [agency announced](#) that it was revising its standard for evaluating the lawfulness of employer personnel policies under the National Labor Relations Act (NLRA), and that ruling – a ruling that likely will result in more workplace policies being upheld – appears to already be paying dividends.

On Jan. 29, the U.S. Court of Appeals for the D.C. Circuit [granted](#) a request from the NLRB to have a case remanded back to the agency in which the board had found several of a restaurant's work rules to be in violation of the NLRA. Specifically, the NLRB had ruled that the employer's rules pertaining to things like "positive culture" and "online communications" were unlawful under its old standard. The outcome may be different in light of the NLRB's newly enunciated test, so second time may be the charm in light of the fact that the board will re-evaluate the disputed rules under its new standard.

The NLRB's prior standard with respect to [personnel policies](#) barred such policies and rules where they could be "reasonably construed" by employees to prohibit the exercise of their rights under the NLRA. The Obama board frequently used that standard in invalidating numerous [handbook policies](#) over the years from [social media policies](#) to rules limiting [recording devices](#) and more. Federal courts, at times, [reigned in the agency's rulings](#).

Under the NLRB's new standard, in many circumstances, the board now will evaluate two things: 1) the nature and extent of the potential impact on NLRA rights, and 2) legitimate justifications associated with the rule. The fact that the NLRB now will be giving weight to employers' justifications, at least in some cases, is welcome news. Stay tuned for further developments on this front.

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