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Can You Prohibit Employees From Using Cell Phones At Work?

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With the prevalence of cell phones in today's society, many companies struggle with how to manage employee time spent on personal mobile devices. But there are legal limits on what employers can do on this front. The National Labor Relations Board (NLRB) has taken the position that employees have a presumptive right, in most instances, under the National Labor Relations Act (NLRA) to use personal phones during breaks and other non-working times.

A [recent advice memo](#) issued by the agency has reaffirmed its stance – even since the NLRB generally has taken [a more lax view](#) of employer personnel policies [over the last year](#). At issue in this case was a company policy that limited employees' use of personal cell phones in the workplace. The relevant analysis in the NLRB memo states:

"This [company's] rule states that, because cell phones can present a 'distraction in the workplace,' resulting in 'lost time and productivity,' personal cell phones may be used for 'work-related or critical, quality of life activities only.' It defines 'quality of life activities' as including 'communicating with service or health professionals who cannot be reached during a break or after business hours.' The rule further states that '[o]ther cellular functions, such as text messaging and digital photography, are not to be used during working hours.' **This rule is unlawful because employees have a [NLRA] Section 7 right to communicate with each other**

through non-Employer monitored channels during lunch or break periods. Because the rule prohibits use of personal phones at all times, except for work-related or critical quality of life activities, it prohibits their use on those non-working times. The phrase regarding text messaging and digital photography is more limited, but still refers to ‘working hours,’ which the Board, in other contexts, has held includes non-work time during breaks. **Although the employer has a legitimate interest in preventing distractions, lost time, and lost productivity, that interest is only relevant when employees are on work time.** It

therefore does not outweigh the employees’ Section 7 interest in communicating privately via their cell phones, during non-work time, about their terms and conditions of employment.” (emphasis added)

In other words, while an employer may be able to limit employee use of personal mobile devices during working time in order to minimize distractions, having a policy in place that is worded in a way that limits that activity during non-working time may run afoul of the NLRA.

This is [another reminder](#) for employers to ensure their policies are drafted in a way that conforms to applicable NLRB standards. A poorly drafted rule – even with the best intentions – can result in legal headaches for a company.