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NLRB Continues To Validate Employee Confidentiality Provisions

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A recent decision by the National Labor Relations Board is noteworthy not for a unique holding or fact pattern but rather for the consistency the current NLRB has shown in applying its *Boeing* work rule test to validate innocuous handbook rules such as confidentiality policies.

As has been discussed [frequently on this blog](#), *Boeing* was a landmark 2017 decision in which the NLRB overruled extant labor law and [set forth a new standard](#) for determining whether a facially neutral work rule unlawfully interferes with, restrains, or coerces employees in the exercise of their Section 7 rights, which include the right of employees to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection.

Prior to *Boeing*, the NLRB invalidated handbook rules that it determined could be “reasonably construed” by employees as interfering with Section 7 rights. In [Argos USA, LLC](#), the NLRB gave its stamp of approval to a confidentiality policy that prohibited employees from disclosing “confidential information,” which included “earnings” information and “employee information.”

The concern with this policy in the pre-*Boeing* world was that it could be “reasonably construed” by employees to prohibit them from discussing things like employee wages and contact information with each other. This is an area the NLRB continues to strongly enforce against both union and nonunion employers, but today’s NLRB has taken a more [employer-friendly approach](#).

In *Argos USA, LLC*, the NLRB explained that, under its “objectively reasonable employee” standard, the policy was understood to be referring to the company’s earnings information and to employee information belonging to the company. In other words, staffing information and not employee wage or contact information.

While the NLRB's consistent approach means confidentiality policies limited to company information will be facially lawful, both union and nonunion employers should remember that the rule must still be applied lawfully and that employees do have a right to discuss issues related to their employment.