

NLRB's Acting General Counsel Addresses Controversial Complaint Regarding At-Will Employment Language And Other Employee Handbook Provisions

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On June 11, 2012, NLRB Acting General Counsel, Lafe Solomon, addressed the Connecticut Bar Association, specifically discussing the issuance a complaint in February by Region 28 alleging a multitude of violations arising from the various rules contained in the company's employee handbook. Among rules alleged to be in violation of the NLRA was an employee acknowledgment that employment was at-will employment and that at-will status only could be altered by a statement signed by the employee and either the executive vice-president or chief operating officer of the company. The Acting General Counsel stated his view language in an employee acknowledgment disallowing the alteration of the employment at-will relationship was unlawful because it implied a futility of unionization and failed to acknowledge that a collective-bargaining relationship could affect the at-will relationship. Another description of Solomon's statements can be [found here](#).

Though the case has been settled and the main attention has been the at-will employment issues, the Complaint is troubling because of the multitude of allegations that a variety of seemingly unremarkable policies were alleged by the Board to violate the Act. The allegedly offending policies included:

"Avoid commenting on [Company] or any [Company] location;"

"[r]efrain from posting images of [Company's] locations or facilities or displaying [Company] logos;"

"[y]ou have a duty to report any known or suspected violation of this Code, including any violation of the laws, rules, regulations or policies that apply to [Company];"

the classification of "training materials" and "personnel information" as confidential; "[u]nauthorized disclosure or use of any confidential information about Hyatt, its associates, its clients or guests . . . you have learned through, or as a result of, your employment at [Company] ;"

"[p]articipating in civic or professional organization activities in a manner whereby confidential company information is divulged;"

"revealing confidential data to anyone;"

"misstating revenues, expenses or assets;"

"interfering with or hindering work schedules, failing to work a shift as scheduled;"

"leaving your department or work area without the permission of your supervisor or being in locations other than your assigned work areas;"

"refusing to cooperate with a hotel investigation or failing to report a violation

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of hotel policies and procedures;"

"[a]ny requests for information regarding the business of the hotel or related matters are to be directed to the General Manager or Director of Sales;"

"making derogatory or unfounded statements about [Company], [or] its employees;"

"[y]ou agree that you shall not, at any time, disparage [Company] or any of its respective subsidiaries, affiliates, directors, officers, or employees."

Some of the positions asserted about confidential information are not new – the Board has long asserted that employees cannot be prohibited from disclosing wage information and that overbroad non-disclosure policies violate the Act. However, the breadth of policies alleged to violate the law combined with the Acting General Counsel's comments should serve as warning that the current Board is taking positions trying to assert its role in the regulation of non-unionized workforces.