

Woo-hoo! Federal Court Overrules NLRB, Says Companies Can Require Employees To Promote Positivity

July 26, 2017 | [National Labor Relations Board, Labor And Employment](#)



David J. Pryzbylski
Partner

The National Labor Relations Board's (NLRB) attack on personnel policies has been well-chronicled over the years. In May 2016, however, the NLRB's view of handbook policies arguably [peaked when it struck down](#) numerous policies in a T-Mobile handbook, including one that generally asked employees to be professional and maintain a "positive work environment." In that case, the NLRB explained its view by stating: "[w]e find that employees would reasonably construe the rule to restrict potentially controversial or contentious communications and discussions, including those protected by Section 7 of the [NLRA], out of fear that the [employer] would deem them to be inconsistent with a 'positive work environment.'" The case then was appealed to the U.S. Court of Appeals for the Fifth Circuit. Fast forward to now. [On July 25, the Fifth Circuit ruled](#) that the NLRB erred in finding the positive work environment policy was unlawful. Specifically, the court declared that the NLRB's ruling on the policy was "unreasonable" because any reasonable employee would understand that the rule did not prevent him/her from engaging in protected activity. The court also overturned the NLRB's findings that several other T-Mobile rules were unlawful, including a "commitment-to-integrity policy." The court agreed with the board, however, that a rule categorically banning photography, audio, or video recordings by employees was unlawful. The U.S. Court of Appeals for the Second Circuit upheld a similar [NLRB decision on workplace recordings](#) just last month. Thus, general bans on workplace recordings appear to be a losing proposition for employers from a legal perspective, at least for now. Seeing the NLRB reined in on legitimate personnel policies is a welcome sight. Here's hoping the [new additions to the board](#) will help move things in an even more positive direction for employers.

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

T-Mobile