

Employer Handbook Policies Still In The Crosshairs: NLRB Judge Strikes Down Employer's Moonlighting Policy

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In case you thought the NLRB's December decision in *Boeing Co.* meant the end of the board's uber-zealous scrutiny of employer handbook policies – think again. In *Boeing Co.* the board articulated an apparently less exacting standard for reviewing whether employer policies violate the act, vowing to balance employer justifications for such policies against the alleged imposition on the rights of employees from the maintenance of the policies. However, a recent decision applying the *Boeing Co.* standard warns employers that their policies may still be subject to strict review. In *Nicholson Terminal & Dock Co.*, 07-CA-187907, NLRB Administrative Law Judge Elizabeth Tafe found the employer's policy against moonlighting without the permission of the company to be a violation of the act. Nicholson's stated justification for ensuring its employees are well-rested and that they don't work for competitors did not fare well against ALJ Tafe's judgment; the judge said that requiring company permission to have outside employment was a significant imposition on the rights of employees who might want to obtain outside employment with a labor organization for the purpose of organizing. ALJ Tafe suggested that a "better tailored rule" would better serve the employer's purposes, while not imposing as much on the rights of employees. What *Nicholson* illustrates is that at least some NLRB judges continue to heavily scrutinize employer policies that are not – in their view – "narrowly tailored" enough. Perhaps the board will use this case, or one similar to it, to further clarify the new *Boeing Co.* standard. For now, however, employer workplace policies may continue to receive heavy scrutiny.

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