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NLRB OK's Employer's Moonlighting Ban

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The NLRB's 2017 *Boeing* standard for evaluating the lawfulness of employer policies governing their employees continues to deliver good results for employers. Last week in [Nicholson Terminal & Dock Co.](#), the board upheld the company's "moonlighting" policy that prohibited employees from "hav[ing] another job that:

- Could be inconsistent with the Company's interests;
- Could have a detrimental impact on the Company's image with customers or the public;
- Could require devoting such time and effort that the employee's work would be adversely affected."

The policy further explained that "[e]mployees are expected to devote their primary work efforts to the Company's business."

The board placed such "moonlighting" policies in *Boeing* Category 1(a), meaning they will always be lawful. In coming to this conclusion, the board leaned heavily on the *Boeing* standard's emphasis on interpreting the language of the policy as a reasonable employee would interpret it. Thus, although the rule might be read to preclude a small area of protected activity, like paid employment for a union under circumstances protected by the NLRA (working as a union "salt," for example) the reasonable employee would not

read the rule in such a fashion.

The clear purpose of the company's moonlighting rule is "to prevent employees from taking outside employment that adversely affects their work for the Respondent," and interpreted in light of that purpose, the board concluded that the reasonable employee would not draw the conclusion that the rule would "prohibit[] the protected activity of part-time work as a union salt that did not interfere with their ability to perform their duties for the Respondent." Thus, this moonlighting rule and others similar to it pass muster under the Board's *Boeing* scheme.

This case illustrates the NLRB's continued emphasis on reading employer rules like a reasonable person (i.e., like non-lawyers). Stay tuned as the board continues to add to its growing body of *Boeing* interpretations.