



Warning: Your Company's Personnel Policies May Be About To Expire

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For the last four years or so, employers have generally had more flexibility to craft their everyday personnel policies than they did in prior years due to a [favorable legal standard](#) issued by the National Labor Relations Board (NLRB) in 2017. However, the [NLRB is on the cusp of reviewing this issue](#) and based on its [current constitution](#), many are predicting significant changes that will restrict how employers can draft their policies.

According to Bloomberg Law:

“The National Labor Relations Board’s reconsideration of its Trump-era legal framework for workplace rules and employee handbooks has put companies in limbo, with management-side lawyers divided on whether businesses should begin retooling policies or wait until the board rules. Public comments are due [March 7] on the NLRB potentially scrapping the standard from its 2017 Boeing ruling and replacing it with a more restrictive test for determining if employer policies unlawfully infringe on employees’ rights to work together to improve job conditions.”

In sum, a ruling from the NLRB is expected in the coming months that could significantly implicate and impact a range of HR policies maintained by companies – union and non-union alike.

For example, under the Board’s precedent prior to 2017, the NLRB routinely found confidentiality policies that stated employees were expected to

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safeguard and not disclose any “confidential information” to be unlawful. The rationale was that merely stating “confidential information” without defining it to exclude things like employee compensation information was overly broad and violated the National Labor Relations Act. Needless to say, employers often were left guessing which of their longstanding, routine employee policies would withstand a challenge by the NLRB. Similar rulings invalidating cell phone, video recording, workplace conduct, and other policies were handed down as well.

A finding from the NLRB that a policy is unlawful can have significant consequences for an employer. One of the most drastic penalties is a rerun union election. For instance, if an employer going through a union election mounts a successful campaign and its workers elect to not have a union, but the NLRB determines during the course of the campaign that the company maintained an unlawful workplace rule, then the election result can be set aside and a rerun vote can be ordered. Other penalties could include orders to rescind the policies at issue and reinstate (with backpay) any workers terminated pursuant to an unlawful policy.

Bottom line: many employers updated their policies in or after 2017 when the NLRB issued its more lenient standard, but that standard may be about to expire – along with any company’s personnel policies that don’t pass muster under a more restrictive test.