

NLRB Once Again Puts Employers On Notice Regarding Handbook Policies

October 27, 2015 | [Employment Lessons, Labor And Employment](#)

As I've noted several times on this blog, the National Labor Relations Board (NLRB) is not messing around when it comes to handbook policies.

In the last few years, the NLRB has been aggressively looking for and cracking down on policies it believes are chilling the rights of employees to take protected, concerted action under the National Labor Relations Act relating to terms and conditions of employment. For handbook purposes, it makes no difference whether the company is a union or non-union shop. While many of the NLRB's rulings have been controversial, to say the least, such teeth gnashing from the corporate community at large provides little comfort to the company that finds itself in the crosshairs of the agency. The latest example comes from an NLRB administrative law judge (ALJ) [decision](#) out of Georgia.

After an auto title loan business convinced the ALJ that it terminated an employee for her loud and belligerent outbursts – as opposed to any protected activity when she discussed her wages with her co-workers – the company was probably feeling pretty confident. Not so fast. Notwithstanding the company's victory in the termination dispute, the ALJ went on to review the business's employee handbook and found several violations. One of the unlawful policies prohibited employees from "spreading ... malicious gossip or rumors" or "creating general discord." A bar on creating discord might prevent workers from talking about working conditions, reasoned the ALJ.

Another rule stating that "Social Media should never be used in a way that defames or disparages the Company" was easily struck down for similar reasons. The ALJ also recommended that the NLRB order the company to post a prominent notice of its wrongdoings related to the handbook.

The point here is that with the ever-changing legal landscape of what the NLRB considers unlawful by way of handbook policies, I can almost guarantee that any handbook not vetted in the last few months (much less years, as is the case with many, if not most companies) contains policies unlikely to pass muster. If your handbook has been gathering dust, perhaps it's time to do a bit of fall cleaning.

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