



Can You Stop Your Employees From Talking To The Press?

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Most organizations seek to protect their public image, including how they are portrayed by the media. As a result, many employers maintain policies that limit or [restrict what employees can say](#) about the company in response to inquiries from the press. But are such policies lawful? The National Labor Relations Board (NLRB) over the years has struck down such policies that, in its view, cross the line, so this is an area where caution can be prudent. This is especially true now, based on some signals coming out of the NLRB.

According to a recently released [advice memo](#) from the agency's office of the general counsel, the NLRB will now be scrutinizing media policies more closely. From 2017 to 2020 or so, the Trump Board upheld many policies that greatly limited employee comments to the press about their employers, but those days may be numbered. The advice memo notes that under current NLRB precedent, policies requesting employees to direct media inquiries to a marketing department generally are lawful. It further notes, however, the NLRB general counsel is looking for a case to be used as a "vehicle" to get that standard changed – to the detriment of employers. In other words, the [newly constituted Biden Board](#) has plans to crack back down on these policies.

Media policies aren't the only category of work rules in the agency's crosshairs. Social media, respectful workplace, confidentiality, and numerous other buckets of [routine policies](#) are expected to come under attack.

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If the NLRB ever concludes a company's media or other personnel policies are unlawful, there can be significant consequences for the employer. For example, if an employee is terminated pursuant to an illegal rule, then the agency can order the employee reinstated with backpay – and possibly [other consequential damages](#). The stakes can get even higher in a union election. If the NLRB determines that during the course of the campaign that an employer maintained an unlawful workplace rule, then the election result can be set aside and a rerun vote can be ordered.

This advice memo is another signal from the NLRB that the agency will be much more aggressive in this context than it was in recent years. Employers beware.