

You Can't Make Me Be Positive!

May 3, 2016 | [National Labor Relations Board, Labor And Employment](#)



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Apparently if you ask employees to maintain a positive workplace, you are acting unlawfully. At least, that's the National Labor Relations Board's (NLRB) view of it. In a decision last week in *T-Mobile USA, Inc. and Communications Workers of America and Communications Workers of America Local 7011, AFL-CIO*, the board agreed with administrative law judge (ALJ) Christine E. Dibble and overturned several of T-Mobile's handbook rules. But the board then went further than Judge Dibble even went and found additional rules to be unlawful. T-Mobile's rule on positive work environment stated: "[T-Mobile] expects all employees to behave in a professional manner that promotes efficiency, productivity, and cooperation. Employees are expected to maintain a positive work environment by communicating in a manner that is conducive to effective working relationships with internal and external customers, clients, co-workers, and management." In the board's view, "[w]e find that employees would reasonably construe the rule to restrict potentially controversial or contentious communications and discussions, including those protected by Section 7 of the [NLRA], out of fear that the [employer] would deem them to be inconsistent with a 'positive work environment.'" Also struck down in the decision was a rule that prohibited recordings in the workplace. That rule provided: "To prevent harassment, maintain individual privacy, encourage open communication, and protect confidential information employees are prohibited from recording people or confidential information using cameras, camera phones/devices, or recording devices (audio or video) in the workplace. Apart from customer calls that are recorded for quality purposes, employees may not tape or otherwise make sound recordings of work related or workplace discussions. Exceptions may be granted when participating in an authorized TMUS activity or with permission from an employee's Manager, HR Business Partner, or the Legal Department. If an exception is granted, employees may not take a picture, audiotape, or videotape others in the workplace without the prior notification of all participants." The board noted that this rule was overly broad and not tailored to the specific needs of the employer. Moreover, the "rule does not differentiate between recordings that are protected by Section 7 and those that are not, and includes in its prohibition recordings made during non-work time and in non-work areas." The other rules struck down by both ALJ Dibble and the NLRB were rules that: declared the employee handbook to be a confidential and proprietary document; rules that prohibited disclosure of the handbook to third parties without prior written permission; mandated that employees must maintain the confidentiality of the names of employees involved in internal investigations; and declared employee salary information to be confidential. In striking down these rules, the board again was acting without evidence that any of these rules in fact restricted protected employee activity under Section 7 nor were

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the rules promulgated in response to union organizing or other conduct protected under Section 7. A copy of the decision is available [here](#).