

A Nice Change Of Pace: NLRB Upholds Employer's Confidential Information Policy

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From social media policies to positive workplace environment statements to non-employee access to company property procedures, the National Labor Relations Board (NLRB) has struck down numerous company personnel policies in recent years on grounds they “chill” employees’ ability to engage in protected activity under the National Labor Relations Act (NLRA). The board generally cites Section 7 of the NLRA as support for its positions, which protects employees engaging in “concerted activity” for “mutual aid and protection.” The agency has construed this language broadly to mean, in its view, that employment policies cannot impede on employees’ rights to discuss the terms and conditions of their employment. On Aug. 14, the NLRB issued a [rare decision](#) in which it upheld Macy’s, Inc.’s “confidential information policy.” The policy at issue provided, among other things, that employees could not use/divulge various types of confidential information, including marketing plans, pricing strategies, social security numbers, credit card numbers, etc. The United Food & Commercial Workers union challenged the policy on grounds that it allegedly “chilled” workers’ rights, including by limiting employees’ ability to appeal to the company’s customers. In recent years, the NLRB has struck down similar confidentiality policies in various contexts. That was not the case here. The NLRB ruled that Macy’s confidential information policy was narrowly drafted and did “not interfere with the [employees’ rights] insofar as they restrict the use or disclosure of social security numbers and credit card numbers, or to the extent they restrict the use of customer contact information obtained from [the company’s] own confidential records.” Thus, this serves as a great example of how to tailor similar policies to maximize chances of prevailing against challenges by the NLRB. This also comes on the heels of a federal court reining in the NLRB related to a [“positive workplace” policy](#). There, the court overruled the board and held that, generally, an employer can require employees to promote a positive workplace. While employers still need to be cognizant of the NLRB’s general approach to these cases, it appears that the board’s positions are being pared back. In addition, it is possible, if not likely, that we will see more positive changes on this front coming when a [pro-management NLRB is in place](#), as the current chairman has indicated he desires to modify the agency’s approach on these issues and take a more practical (and likely business-friendly) [approach](#).

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