



RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

Employer Policy
NLRB NLRA
Union Elections

Is It Time To Review And Consider Updates To Your Personnel Policies?

June 16, 2021 | [Labor And Employment, National Labor Relations Board](#)



**David J.
Pryzbylski**
Partner

Social media policies. Cell phone and electronic device policies. Confidentiality policies. Respectful workplace policies. Workplace investigation policies. At-will disclaimers. What do these all have in common? Various iterations of these standard personnel policies all previously were ruled to be unlawful by the National Labor Relations Board (NLRB) under the Obama administration.

Because President Biden has an opportunity in the near future to [reshape the NLRB](#) in a way that echoes and may even surpass the [pro-labor tendencies](#) we saw from 2008 to 2016, private sector employers – especially non-union companies – should consider reviewing their employee handbooks and policies soon.

In 2017, the Trump Board issued a significant decision that altered how the [NLRB evaluates employer policies](#). For example, in some cases, the NLRB looks at the business rationale behind a rule and, depending on the justification, could find arguably overboard policies to be lawful. The Obama Board, in contrast, virtually never took into account the reasons behind a rule and simply found policies to violate labor law based upon on their wording.

The Obama Board issued numerous decisions that threw standard personnel policies into disarray. For instance, that NLRB routinely found confidentiality policies that stated employees were expected to 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 (NLRA). Needless to say, employers often were left guessing which of their longstanding, routine employee policies would withstand a challenge by the NLRB.

Having the NLRB rule a personnel policy is unlawful can have significant consequences for an organization. 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. This negative result would be compounded even more [if the PRO Act becomes law](#), as that legislation would make it possible for the NLRB to automatically certify a union under these circumstances versus merely ordering a rerun.

Bottom line: the Biden Board is coming. Its view of whether standard personnel policies comply with the NLRA almost certainly will mirror – if not exceed – how the Obama Board approached these. It may be time to give your policies a fresh look and be proactive on this front.