



CITRON & DEUSCH
A DIFFERENT KIND OF LAW FIRM

10866 WILSHIRE BLVD. SUITE 970
LOS ANGELES, CA 90024
T 310.475.0321 | F 866.860.5320

Published by:
RICHARD K. CITRON
DAVID R. DEUSCH
SHARONA KATAN
COURTNEY EISNER
XOCHITL CORTEZ

NEWSLETTER

NATIONAL LABOR RELATIONS BOARD – NEW GUIDELINES ON EMPLOYEE HANDBOOKS

The National Labor Relations Board (“*NLRB*”) General Counsel, Richard Griffin, recently issued the “**Report of the General Counsel Concerning Employer Rules**,” a comprehensive report providing guidance to employers on what the NLRB deems to be lawful and unlawful company handbook provisions and policies. The rules in the Report apply to both unionized and non-unionized employers because the National Labor Relations Act (“*NLRA*”) restricts all employers from issuing policies or rules that inhibit employees from engaging in activities protected by the NLRA, such as discussing wages, criticizing management, publicly communicating about working conditions and discussing unionization. The Report contains many examples of prohibited employee handbook provisions which would not appear to violate the law to many employers. For this reason, it is important for a company to review its employee handbook in light of the Report, and to modify any provisions that would be unlawful.

Rules Regarding Confidentiality. Employees have a right to discuss wages, hours and other terms of employment with other employees and nonemployees, so any rule against discussing conditions of employment, or a rule that employees would reasonable understand to prohibit such discussions, would violate the NLRA. For example, the following rule would be unlawful: “Do not discuss customer or employee information outside of work, including phone numbers and addresses.”

Rules Regarding Employee Conduct Toward the Company and Management. Employees have a right to criticize or protest their employer’s labor policies or treatment of employees, so any rule that can be read to prohibit criticism of the company or its management will be found unlawfully overbroad. For example, the following rule would be held to be unlawfully overbroad: “Be respectful to the company, other employees, customers, partners, and competitors.” as would the rule “Be respectful of others and the Company.” Since an employee’s right to criticize an employer’s labor policies includes the right to do so in a public forum, the following rule would be unlawful: “Do not make statements that damage the company or the company’s reputation or that disrupt the company’s business relationships.”

Rules Regarding Conduct Towards Other Employees. Employees have a right to argue and debate with each other about unions and conditions of employment. Accordingly, rules which restrict this are unlawfully overbroad. For example, the following rule would be held to be unlawfully overbroad since it would limit employees rights to honestly discuss these subjects: “Do not make insulting, embarrassing, hurtful or abusive comments about other company employees online, and avoid the use of offensive, derogatory, or prejudicial comments.”

Rules Regarding Employees Interaction With Third Parties. Employees have the right to communicate with the news media, government agencies, and other third parties about wages, benefits, and other terms and conditions of employment. Accordingly, rules which restrict this are unlawfully overbroad. For example, the following rule would be held to be unlawfully overbroad: “Employees are not authorized to speak to any representatives of the print and/or electronic media about company matters unless designated to do so by HR, and must refer all media inquiries to the company media hotline.”

Rules Restricting Use of Company Trademarks. Employee handbook rules cannot prohibit employees' use of the company's logos or trademarks since employees have a right to use the name and logo on picket signs, leaflets, and other protest materials. The following rule would be held to be unlawfully overbroad: "Do not use any company logos, trademarks, graphics, or advertising materials in social media." as would the rule "Company logos and trademarks may not be used without written consent"

Rules Restricting Photography. Rules prohibiting photography may be unlawfully overbroad because an employee could reasonably interpret the rule to prohibit the use of photographs to engage in protected activity on breaks or other non-work time, or to document health and safety violations. For example, the following rule would be held to be unlawfully overbroad: "Taking unauthorized pictures or video on company property is prohibited."

Rules Restricting Leaving Work. One of the fundamental rights of an employee is to go on strike. Accordingly, a rule regulating when an employee can leave work is unlawful if the employee would reasonably read it to forbid strikes and walkouts. The following rule would be held unlawful: "Walking off the job is prohibited."

Rules Regarding Conflict of Interest. The NLRB protects employees' rights to engage in concerted activity to improve the terms and conditions of employment, even if it is in conflict with the employer's best interests. The following rule would be held to be unlawful: "Employees may not engage in any action that is not in the best interests of the company."