

Employee Manuals – Sticking to the Script: New Guidance from the NLRB

Matthew C. Luzadder

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On April 7, 2016, a National Labor Relations Board (“NLRB”) Administrative Law Judge (“ALJ”) ruled that five Dan Gilbert companies, including Quicken Loans Inc., Fathead LLC, In-House Realty LLC, One Reverse Mortgage LLC, Rock Connections LLC and Title Source Inc. (the “Companies”), promulgated rules in an employee manual called “The Big Book” that workers could reasonably interpret as interfering with their rights under Section 7 of the National Labor Relations Act (the “Act”).

The NLRB case stems from a complaint by a former Quicken employee who claims he was fired by Quicken in retaliation for exploring whether to start a union. NLRB’s regional office in Detroit investigated the complaint and declined to file a case over the firing, instead it filed the complaint against Quicken regarding its employee handbook rules.

The ALJ determined that many of the rules included in the Big Book violated the NLRA because they were written so broadly that it would have been reasonable for employees to conclude that the Companies were barring their rights under the Act to debate and communicate with each other about the terms and conditions of their workplace.

The over 200-page Big Book advised employees in part:

“If it doesn't belong on the front page of the New York Times, don't put it online... Something wrong at QL? Don't take it online. Resolve work-related concerns by speaking directly with your Team Leader or Team Relations Specialist... The Company's buildings, offices, common areas, facilities, parking lots, automobiles, data centers, mail rooms and the like, whether leased or own, are to be used only for conducting Company business and transactions, and for no other purpose. You may not

conduct any other for-profit or charitable business enterprise, transaction, fundraising, or other venture from within or using the Company's Facilities (except with the express written pre-approval of the Director of Team Relations or the Director of the FOCUS Team and, then, only as to the specific activity approved)."

In reaching his decision, the ALJ rejected the Companies' argument that managers did not use or rely on the "Big Book." The ALJ was adamant that employees would reasonably believe that an employee manual created and distributed by the company was intended to be an official manual of rules that employees were to follow.

Instead of imposing a monetary fine, the ALJ ordered the Companies to make 24 changes to its employee rules and to post a four-page notice informing workers that the Companies erred. The note is also supposed to remind employees that they have a right to unionize. It is important to note that the ALJ ordered the posting even though the Companies rescinded all versions of the Big Book before the ruling.

The Companies have already filed an appeal. The case will likely next go before the full five-member NLRB board in Washington, D.C., and later the federal courts, should the Companies appeal any future ruling.

Takeaways:

- Review your employee manual and ensure the rules are not overly broad. If you are unsure if something is too broad, reach out to labor and employment counsel.
- Pay special attention to rules that may limit an employee's ability to organize with other employees to "improve terms and conditions of employment," including online activity.
- If you do not use your employee handbook, rescinding it as non-use is not a defense. Contact labor and employment counsel to draft an updated and specific employee manual.