

Helpful Guidelines For Employee Handbook Drafting

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The NLRB has recently been active in analyzing whether employee handbooks violate Section 7 of the National Labor Relations Act (the “Act”). In light of this, it is advisable for employers to try to imagine their handbook provisions being construed restrictively, especially with regard to communications that employees engage in for unionizing efforts and discussing workplace disputes with other employees. Taking such a stance can help ensure employers revise their handbook properly to prevent an adverse ruling. Below are some reminders for an employer when drafting or revising an employee handbook.

- Many employers include a “savings clause” that tells employees that nothing in the handbook intends to limit them from engaging in their rights protected by the Act. Employers should be careful not to have a savings clause that is too general, and any savings clause should be structured to specifically mention the broad rights that Section 7 of the Act confers on them
- Employers should be mindful that the NLRB has rejected handbook provisions restricting the use of “confidential” information because such provisions could be construed as restricting communicating with each other about wages and terms of employment, or from contacting a union about employees who might be interested in joining it
- For a similar reason, handbook provisions restricting the use of company logos may also be unlawful under Section 7 because, barring a legitimate business justification for the use restriction, using a logo in communications that are otherwise protected under Section 7 can be viewed as an effective way to communicate a dispute about the terms and conditions of employment
- Any restriction on communications with government entities could be cause for concern as well, as it could discourage or prevent employees from being involved in a government inquiry by the NLRB itself.

These are just a few helpful guidelines from recent NLRB decisions. In addition, employers should be vigilant in consulting with employment counsel to review each instance where a handbook prohibits certain employee communications or conduct to determine any risk that it may run afoul of the Act.