

THE INTERSECTION BETWEEN SOCIAL MEDIA AND LABOR LAW



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NLRB Principles In Connection With Consideration of Work Rules, Handbooks and Social Media Policies



- *Does the rule explicitly restrict Section 7 activity?*
- *If not explicitly, would employees reasonably construe the rule as restricting Section 7 activity?*
- *Any ambiguity is to be construed against the employer.*

Rule:

No insignia, emblems, buttons, or items other than the those issued or authorized by the Company will be worn on or with the uniform while on duty



- Terms such as “on duty” “company time,” “business hours” and “working hours” are ambiguous and, therefore, must be construed against the employer – correct description is “working time” which by definition excluded “breaks” or “meal time.”
- Rule is also overly broad – the law permits such insignia at all times except under “special circumstances” such as “situations where the display of union insignia might unreasonably interfere with a public image that the employer has established as part of its business plan through appearance rules for its employee.”



Give respect Get respect

Rule:

Employees shall not act other than respectfully to any other employee as to any other employee or the clients to which they are assigned. The use of threatening and or abusive, demeaning, vulgar and profane language toward another, on or off duty, is prohibited as is any threat of violence or actual violent act.



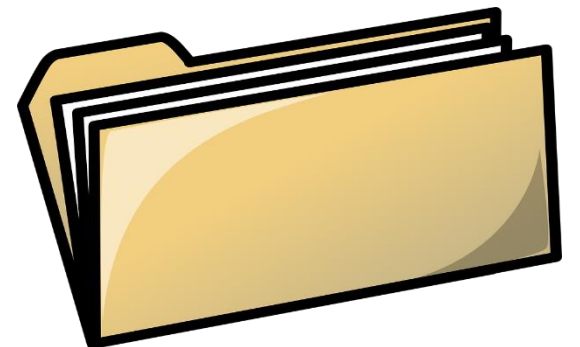
- Rule is lawful because “respectfully” is connected to “threatening and abusive language” which the Board has concluded “the employer has a legitimate interest in restricting.”

Rule:

Supervisors and Site Managers shall not reveal or divulge information regarding current or former employees except as provided elsewhere in this manual or as required by management. Specifically information contained in personnel records, official correspondence and other information accessible only to Company employees is considered CONFIDENTIAL in nature. Indiscriminate and/or unauthorized disclosure reflects gross misconduct and shall be grounds for immediate dismissal.



- Policy is overly broad – employees would reasonably construe this as limiting employees from discussing these terms and conditions of employment with co-workers and outsiders.



Rule:

On duty employees will not discuss information of any kind concerning their duty assignments with anyone except their supervisor.



- Overly Broad – limits employees right to discuss wages, hours, terms and conditions of employment with outsiders or fellow employees.
- Is not limited just to client security needs.





Rule:

“Employees must always respect confidential and proprietary information. Therefore employees may not disclose sensitive, proprietary, confidential or financial information about the Company to customers, clients, parents, subsidiaries or affiliates.”



- Unlawful as overly broad – Arguably limits Section 7 activity. Linked to prior rule defining personnel records as constituting “confidential records”; additionally, “sensitive information” is overly broad as also encompassing personnel records.

Rule:

Do not link or otherwise refer to the company website without obtaining the advance written permission of the Company.



- Unlawful – employees are hindered in exercising Section 7 rights if they can not refer third parties to the Company website to support their position; also Company website is accessible by the Public - thus the interest in protecting the employees' ability to effectively exercise their statutory rights significantly outweighs any interest the Employer may have in controlling access to its website. Furthermore, any work rule that requires employees to secure permission from the Employer prior to engaging in Section 7 activities is presumptively unlawful.

Rule:


Employees must obey the law. Therefore, employees should not post any material that is obscene, defamatory, profane, discriminatory, libelous, threatening, harassing, abusive, hateful, embarrassing to another person or entity, about the company or our customers or clients or that violates company policy or the privacy rights of another. Employees are legally responsible for any content they post and can be held personally liable for such content.



- Lawful except “embarrassing” – could prohibit negative conversations about managers.
- Employee would not reasonably construe this rule to bar them from discussing work related complaints, particularly those involving their managers.

Rule:

Employees must respect their readers and fellow employees. Employees are free to express themselves, but they must do so in a respectful manner. Therefore, employees should not post any material containing slurs, derogatory insults, obscenities, or that violates the privacy of another.



- Lawful except as to that “violates the privacy of another”
“Employees would reasonably construe this ban as precluding them from sharing with coworkers or labor organizations information about their co-worker’s terms and conditions of employment even if that information was innocently obtained. Such a rule is unlawful because it would prohibit employees from engaging in the type of conduct that serves as the spark for initiating further protected concerted activity to improve working conditions.”