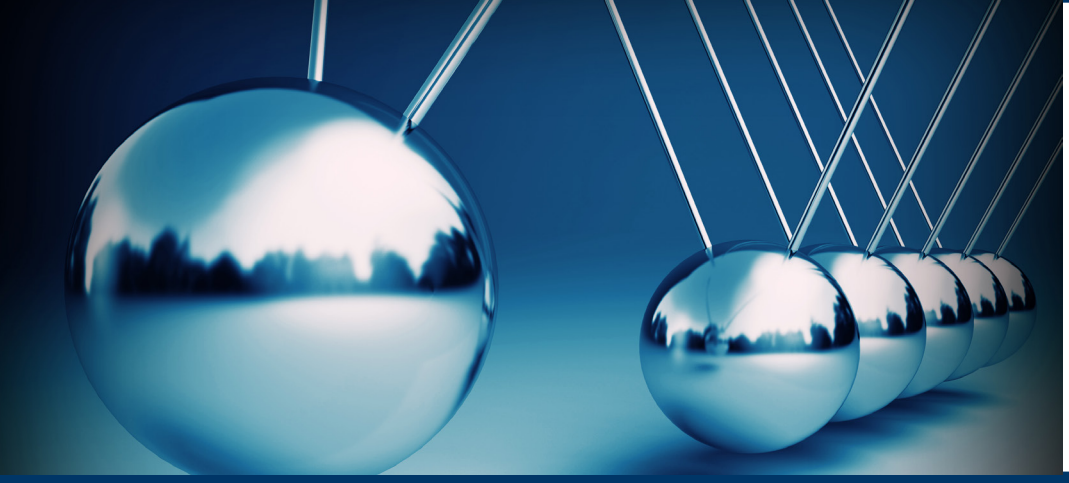

MURTHA MEANS
MORE
INDUSTRY INSIGHT

LABOR AND EMPLOYMENT NEWS

April 2015

"I'M FROM THE GOVERNMENT, AND I'M HERE TO HELP" THE NLRB GENERAL COUNSEL SUMMARIZES WHAT EMPLOYERS CAN AND CANNOT SAY IN RULES AND HANDBOOKS

Most employers of any size have long realized that written rules and policies serve an important function in maintaining a well-functioning workplace. Clearly communicating policies and rules allows managers and employees to operate in a predictable manner rather than by trial and error. Rules increase consistency and, most of the time, decrease tensions.

But employee policies can also be a source of confusion and litigation. Most employers have cut off one area of litigation by incorporating effective disclaimers in their policies, making clear that the policies are not binding contracts. However, in the past decade, the National Labor Relations Board (NLRB) has become more and more active in monitoring employer policies for provisions that might discourage employees from engaging in activity protected by the National Labor Relations Act (NLRA). The NLRB decisions have, at times, seemed difficult to reconcile with each other, and they have left employers with contradictory guidance on how to develop proper policies that both advance the employer's legitimate goals and also comply with the NLRA.

In March 2015, the NLRB's General Counsel, who is responsible for prosecuting violations of the NLRA, tried to reconcile, and to an extent codify, the NLRB's decisions in this area by issuing a "Report Concerning Employer Rules." That report, a complete copy of which is available by clicking here, is a very helpful guide to the current NLRB's thinking concerning several categories of common employer rules, including:

- Conduct Towards Supervisors, Fellow Employees and Third Parties;
- Confidentiality;
- Use of Company Logos, Copyrights and trademarks;
- Restrictions on Photography and Recording; and
- Restrictions on Leaving Work.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

Susan J. Baronoff

Michael Colgan Harrington

Lauren M. Hopwood

Hugh F. Murray, III

Lissa J. Paris

Rachel Faye Smith

Barry J. Waters

Jennifer A. Corvo

Stella Szantova Giordano

Colleen O'Neill

Monica P. Snyder

Kristen L. Zaehringer

The Report provides examples of policies that the NLRB has found unlawful, as well as examples of provisions that the General Counsel's office has found to be lawful. It even goes into detail concerning a recent settlement between the General Counsel's office and the restaurant chain Wendy's.

A few cautionary notes are in order for employers who use this Guide in developing new policies. First, the General Counsel is not the NLRB; a decision by the General Counsel in 2015 not to challenge a particular policy is no guarantee that the NLRB in 2018 would find the policy lawful. Second, and related, the NLRB itself changes with the politics of the incumbent Administration, and the current General Counsel is far more pro-Union than many versions of the NLRB, past or future, so strictly following the Report may be restricting an employer more than is necessary.

Ultimately, employers should develop policies that clearly advance appropriate workplace goals, and then review those policies to see whether a reasonable person reading the policies might interpret them to restrict activity that is protected under the National Labor Relations Act. If so, the employer should make changes to avoid that. The Report provides a handy reference as to recent positions taken by the NLRB and the General Counsel's office in that regard. NLRA compliance is one reason, among many, that employers should have policies reviewed by legal counsel before implementing them.

For a more in depth discussion of the General Counsel's Report, click below to watch a discussion between Hugh Murray and Jen Corvo.

If you have any questions regarding the issues discussed within this article, please contact Hugh F. Murray, III at 860.240.6077 or hmurray@murthalaw.com, Michael C. Harrington at 860.240.6049 or mharrington@murthalaw.com, or Jennifer A. Corvo at 860.240.6055 or jcorvo@murthalaw.com.

Click icon or scan
QR Code to watch Video
Presentation.