

# Trends in National Labor Relations Board Decisions



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**(M<sub>E</sub>B<sub>R</sub>A<sub>Y</sub>E<sub>R</sub>)**

**EMPLOYEE HANDBOOKS**  
The NLRB prohibited employers on standard employee handbook policies, and the results are not pretty.  
The following items are prohibited generally:

**The National Labor Relations Board**  
The NLRB enforces the provisions of the National Labor Relations Act ("NLRA"), first passed in 1935.

**Section 7 Concerted Activities**  
With the focus on "concerted activities," how to do it is the focus in determining the violation.

**Joint Employer**  
The NLRB has established a standard for joint employer liability, and the results are not pretty.

**The National Labor Relations Board**

The NLRB enforces the provisions of the National Labor Relations Act ("NLRA"), first passed in 1935.

At issue and of particular importance to the NLRB are two specific provisions of the NLRA

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Also at issue in the Triple Play case was the employer's internet and blogging policy, which stated:

*"engaging in inappropriate discussions about the company management, and/or co-workers, the employee may be violating the law and is subject to disciplinary action, up to and including termination of employment."*

The NLRB found that this policy could reasonably be seen to stifle Section 7 protected activity and was invalid. The Second Circuit also affirmed this holding.

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**The bottom line:**

Employee social media activity is NOT protected if:

1. It is overly disparaging or defamatory towards the product or service provided by the employer
2. The employee threatens subordination or other malfeasance

Employer social media policies cannot prevent employees from engaging in protected, concerted activity online. In other words: do not stifle employee speech off the clock.

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There are other workplace policies that can run afoul of Section 7, according to the NLRB, so employers now should carefully review their...

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• Bans on recording devices that could be interpreted to prohibit use during non-work attempts or attempts to document health and safety violations or unfair labor practices. A limited scope policy that bans news cameras but not personal cameras is acceptable.

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• A policy that regulates when employees may permissibly leave work that might be construed to prohibit strikes and walkouts. If such a policy clarifies that such actions are permissible by employees, the policy is probably acceptable.

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• A conflict-of-interest policy that could be construed as prohibiting protesting in front of the company, organizing a boycott or soliciting union support on non-work time.

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The bottom line:

Do not put in place policies that employees would reasonably believe would restrict them from discussing the terms and conditions of the workplace with coworkers or third parties, and don't restrict any activities that could reasonably be construed as attempts to improve, expose, protest, boycott or otherwise shed light on the workplace environment.

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**What else is protected, concerted activity?**

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**Discussing job security -**

*Sabo, Inc.*

An employee was fired for telling a fellow vending machine delivery driver about a classified ad she saw from her company. This caused speculation that the company was about to fire someone and she was fired for stirring up trouble. NLRB says this is protected.

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**Filing a class-action lawsuit -**

*200 E. 81st Restaurant Corp.*

An employee believed the restaurant he worked for was violating the Fair Labor Standards Act, so he filed a class-action lawsuit. The restaurant then fired him. The NLRB said this is protected, concerted activity, even though not a single other employee joined the suit.

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# Any questions?



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