

How Rude! NLRB Says Employer Ban on 'Inappropriate Behavior' is Unlawful



You read that right. Soon you will recall the good ol'days when employee handbooks could prohibit employees from having a “discourteous or inappropriate attitude or behavior.”

But last week the National Labor Relations Board (NLRB) ruled that such language was too broad and could possibly deter employees from discussing their pay or working conditions with colleagues. The NLRB strikes again. How could this be?

Case in Point: The employee handbook given to workers at First Transit Inc. included a section that prohibited “poor work habits including loafing, wasting time, loitering or excessive visiting.” The handbook also included a section that banned, “discourteous or inappropriate attitude or behavior toward passengers, other employees or members of the public.”

Employees argued that the rules violated the National Labor Relations Act (NLRA), which gives employees the right to engage in union activity or “concerted activity” for their mutual aid or protection.

The NLRB ruled last week that the first section about loafing and loitering was fine—it was a lawful restriction that doesn't interfere with their federal labor law rights.

However, the board whacked the bus company for the rule against showing discourtesy and an “inappropriate attitude,” saying it is too broad to pass muster under the NLRA.

Reason: Employees could construe that a ban on discourteous or inappropriate activity at work could inhibit their communications with co-workers about employment-related matters.

The bus company had tried to defend itself by noting that its handbook included a “freedom of association” policy that informed employees that “during union organizing campaigns, management shall support the employee's individual right to choose whether to vote for or against union representation without influence or interference from management.”

But the court wasn't swayed by this, calling the policy “too narrow” because of its exclusive focus on union organizing. Plus, the board said this “savings clause” wasn't prominently displayed in the employee handbook. (*First Transit, Inc.*, 360 N.L.R.B. No. 72, 4/2/14)

3 Lessons Learned ...Without Going To Court

1. **Pull out your employee handbook, yet again.** Look for “discourteous and inappropriate attitudes”

and cross off that language. Yes, really. It's permitted now.

2. **Post savings clauses upfront and prominently.** The board noted the company's "savings clause" was not prominently displayed or referenced in the employee handbook. Stick it up front in your handbook in a big font.
3. **Be more specific.** If your anti-harassment or code of conduct policies use such language, then revise the words and give examples of specific conduct the policies are either seeking to prohibit or encourage. This will make it clear to employees you are not trying to interfere with their rights to unionize.