

## Your Employee Handbook May Be a Litigation Trap

By Leo L. Esses, Senior Counsel

Drafting lawful employee guidelines has always been a difficult task, especially when balancing the needs of your employees against employee conduct and the need to protect trade secrets from competition. New guidance from the National Labor Relations Board, which helps guide union and non-union company policies, means that getting this language right has become harder.

What may appear to be common sense and innocuous language in a handbook may actually be unlawful and in violation of federal rights of employees. For example:

- “Do not use any company logos, trademarks, graphics, or advertising materials in social media.” **this was determined to be unlawfully broad**
- “Do not discuss customer or employee information outside of work, including phone numbers and addresses.” **this was determined to be unlawfully broad**
- “It is important that employees practice caution and discretion when posting content on social media that could affect the company's business operation or reputation.” **this was determined to have an unlawfully vague context**

What appears to be an innocuous and sound policy may run afoul of the law.

These are just a few examples illustrating the reality: **what you think is a sound employee policy may not be.** The law is evolving. Review the language under the latest guidance, and make sure that your policies, and the words communicating them, are on safe ground. Let us know if you want help auditing your policies -- and creating or editing them so that you can protect your business.

The memo mentioned above, number GC 15-04, offering more examples of what is permitted and what is unlawful, is listed here: <http://nlrb.gov/reports-guidance/general-counsel-memos>

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