

# Employers – Are Your Work Rules Overly Restrictive?

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In [\*Stericycle, Inc. vs. Teamsters Local 628\*](#) (August 2, 2023), the National Labor Relations Board (NLRB) adopted a new and more stringent legal standard for determining whether a work rule is overly restrictive, finding that the prior standard permitted employers to adopt overbroad work rules. With the retroactive application of this decision, it would be prudent for employers to review company policies and employee handbooks in light of the new standard to ensure compliance.

Section 7 of the National Labor Relations Act (NLRA) provides employees with the right to unionize and join together to advance their interests as employees, and Section 8(a)(1) of the NLRA prohibits employers from interfering with those rights. The prior legal standard balanced the potential adverse impact on Section 7 rights with the employer's justification for a workplace rule, providing that a facially neutral rule would only be declared unlawful if the adverse impact on Section 7 rights outweighed the employer's justifications. Under the new standard, a rule is presumptively unlawful if it has a reasonable tendency to chill employees from exercising their rights, and the presumption can only be rebutted if the employer can show a legitimate and substantial business interest that cannot be advanced with a more narrowly tailored rule. Some types of rules will likely be subject to increased scrutiny, for example:

- restrictions on the use of social media;
- confidentiality of complaints and investigations;
- restrictions on comments to the media;
- non-disparagement rules;
- requirement for employees to work harmoniously with each other, or
- prohibitions on insubordination.

The NLRA applies to almost all private employers, regardless of union status. As such, it is recommended that employers be aware of these obligations and plan accordingly. McGlinchey's [Labor and Employment team](#) is available to assist with the review and possible revision of current policies and handbooks to ensure compliance.

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