



Don't Get Ensnared

News

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Charles Caulkins was quoted in *Human Resources Executive Online* on June 17, 2015. The article "Don't Get Ensnared" discussed how the National Labor Relations Board's strict, employee-friendly interpretation of the law means employers must be very careful in what they say and do.

"The NLRA itself is designed to protect employees, not unions, but we're seeing some decisions that are decidedly pro-union," said Charles, and another member of this year's list.

Still, the NLRB and controversy have gone together for quite some time, he added.

"The NLRB is probably the most politicized of the federal agencies," said Charles. Given that three out of the five board members are typically members of the president's political party, the board's rulings tend to reflect that party's philosophy. Under President Reagan, who campaigned against what he saw as excessive government regulation, the NLRB was seen as overtly pro-business. Under President Obama, who enjoyed near-100-percent support from organized labor during his campaigns, the agency is regarded as markedly pro-union.

"To the victors go the spoils," Charles said.

Offensive language is all about context -- workplace decorum varies considerably between, say, a law firm and a construction site, said Charles. HR needs to remember this when crafting policies and investigating complaints of insubordinate behavior, and consider the subject of the discussion involved: For example, was the flare-up about wages, hours or working conditions? If so, it may fall under the NLRA.

When deciding what to include in handbooks, "less is more" may be the best strategy, said Charles.

"Handbooks don't need to include every single process," he said.

Policies on social media, for example, needn't go into detail on what employees should not say about the company within that medium. If an employee posts something malicious about the company and defends his action by saying it wasn't specifically proscribed in the handbook, said Charles, HR can simply say that it's common sense to know that writing such a thing would be prohibited.

Contact with the media is another touchy area. Rather than forbidding employees from contacting the media, said Charles, the handbook should instead require employees to alert the company about any contacts they have with the media.

"The general counsel has taken the position that if you start restricting contacts with the media, you're restricting their ability to discuss working conditions with the outside world," he said.

To read the full article, please visit [*HR Executive Online*](#).

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