



Don't Let Unions Exploit Personnel Rules

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Even a lawfully worded rule can result in an unfair labor practice finding if it is overbroad, implemented after the onset of union activity, or applied inconsistently against union supporters. Enforcing lawful confidentiality, no-solicitation and no-distribution rules can be very helpful to the employer, but only if your institution is willing and able to enforce the rules consistently.

Mistakes in drafting and enforcing employment policies can help a union to organize your institution. During union organizing drives, unions regularly look for legal violations by the targeted employer, including employment policies and practices that may violate the National Labor Relations Act (NLRA). Unions pursue and publicize such violations to undermine employee confidence in management and taint employer defenses to other charges that the union may file during the organizing drive.

Some common areas of union scrutiny (and employer mistakes) include policies relating to confidentiality, no-solicitation, and no-distribution. Implementing a no-solicitation rule can not only reduce work distractions for employees but also make it harder for union supporters to use their paid working time to campaign for the union. Unions most actively urge work-time solicitation where there is a large voting unit and employees disperse over a wide geographical area after work. In considering whether a no solicitation rule is lawful, the National Labor Relations Board (NLRB) considers the following factors:

- **Language:** One common mistake is to ban employee solicitation during employees' "working hours." That term is illegally overbroad since it can be read to include break and meal periods; the more restricted term "working times" should be used instead.
- **Timing:** If you wait to implement a no-solicitation rule until after union activity begins, the NLRB will usually find the rule unlawful because of the timing of its implementation in relation to union activity.
- **Work status:** Employees can be required to limit solicitation to their nonworking times (designated breaks, meal times, and before or after work). Such limits apply both to the employee soliciting and the employees being solicited. While it is not unlawful to enforce a rule against soliciting before and after work, enforcement of such a rule must be consistent to be lawful.
- **Consistency:** If you allow employees to solicit during work time for other commercial organizations but ban union solicitation, the NLRB will likely find illegal discrimination.

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- Location: Employers must usually allow employees on nonworking time to solicit in various areas, such as lobbies, flower shops, cafeterias, employee break rooms, sidewalks and parking lots.

Overall, remember that under the NLRA, employees are entitled to engage in "concerted activities" for their mutual aid or protection, regardless of whether a labor union is involved. That means, among other things, that employees have the right to discuss among themselves issues relating to their pay, benefits and working conditions. Merely announcing an overbroad confidentiality rule can violate the NLRA, regardless of whether you actually enforce the rule.

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