



Dealership Handbooks Are Being Picked Apart

Insights

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Whether your dealership is unionized or you've never had to deal with organized labor, your employment policies are more likely now than ever to be targeted by the National Labor Relations Board (NLRB). Over the past two years, the board has been increasingly aggressive in striking down auto dealership employment policies that had been legal for years.

An NLRB Administrative Law Judge (ALJ) recently ruled that the “number one Honda dealership on the planet” had some major issues with its employee handbook. While the dealership was not unionized, the ALJ found that a number of provisions in the dealership's handbook still violated the National Labor Relations Act (NLRA). The problematic provisions included:

- confidential and proprietary information: the handbook banned unauthorized disclosure or use of confidential and proprietary information, which included compensation structures and incentive programs. The ALJ held that this provision could impermissibly lead an employee to believe that he was banned from discussing the terms and conditions of his employment with coworkers or a union.
- discourtesy policy: the ALJ found that a provision in this section prohibiting any activity that could harm the image or reputation of the dealership was susceptible to being understood by employees to limit their right to engage in a strike or work stoppage;
- inquires concerning employees: a provision requiring employees to obtain approval from the dealership before providing any personal information regarding another employee to an outside source was impermissible since it would prevent an employee from discussing employees' terms and conditions of employment with unions, the NLRB, and other governmental agencies;
- solicitation and distribution: this provision prohibited nonemployees from soliciting or distributing literature or other materials within the dealership's property or adjacent to it – illegal because an employer may not exclude a union representative from public property;
- social-media policy: the ALJ found that the dealership's extensive social-media guidelines violated the NLRA because employees would reasonably believe that a number of the provisions would prevent them from discussing their conditions of employment with coworkers, unions, and the media;
- dress code: the ALJ partially struck down a provision prohibiting employees who have contact with the public from wearing pins, insignias, or other “message clothing.” Although pins may be

prohibited for safety purposes, there were no special circumstances warranting the prohibition of wearing insignias or other message clothing.

Employee handbooks are invaluable tools for introducing employees to the policies and expectations of a company, and they often play a key role in defeating claims brought against the company by employees. But as the above case illustrates, employee handbooks need to be updated frequently in response to developments in the law. If you have not updated your handbook in the last two years, now is a good time to reevaluate it.

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