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DEALERSHIP HANDBOOKS REMAIN IN THE NLRB'S CROSSHAIRS

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As we advised almost a year ago, the National Labor Relations Board (NLRB) has recently been subjecting dealership handbooks to increased legal scrutiny. Whether or not your dealership is unionized, your employment policies are likely to be targeted by the federal government now more than ever.

In August 2014, we told our readers about the legal troubles of Boch Imports, a Massachusetts nonunion dealer with several seemingly harmless handbook policies. An NLRB Administrative Law Judge held that Boch's policies illegally discouraged employees from engaging in union activity in violation of the National Labor Relations Act (NLRA).

Over the past year, Boch appealed the ALJ's decision, but the NLRB held its ground. Very recently the Board affirmed its decision and again held that Boch's policies unlawfully discouraged employees from exercising their union rights. The dealership will now have to update and revise its policies to comply with the decision. Your dealership can stay on the right side of the law by learning from this decision and revising your handbook as necessary.

As a reminder, here are the policies that the NLRB took issue with:

- ■ **Confidential and Proprietary Information:** Boch's handbook banned unauthorized disclosure or use of confidential and proprietary information, which included compensation structures and incentive programs. The NLRB held that this provision could impermissibly lead an employee to believe that he was banned from

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discussing the terms and conditions of his employment with co-workers or a union;

- ■ **Discourtesy Policy:** the NLRB found that a provision in this section prohibiting any activity that could harm the image or reputation of the dealership was susceptible to being misunderstood by employees as limiting their right to engage in a strike or work stoppage.
- ■ **Inquiries 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 held impermissible because it would prevent an employee from discussing employees' terms and conditions of employment with unions, the NLRB, or other governmental agencies.
- ■ **Solicitation and Distribution:** the Boch handbook prohibited non-employees from soliciting or distributing literature or other materials within the dealership's properties or adjacent to the dealership's property. The NLRB found this provision illegal because an employer can't exclude a union representative from public property.
- ■ **Social Media Policy:** the Board ruled that the dealership's extensive social media guidelines clearly violated the NLRA because employees could reasonably believe that the policies would prevent them from discussing their conditions of employment with co-workers, unions, and the media.
- **Dress Code:** the NLRB 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 employment claims brought against dealerships. But as the Boch case illustrates, handbooks need to be updated frequently in response to changing developments in the law. If you have not updated your handbook recently, now is a good time to do so.

