



FP Snapshot on Manufacturing Industry: Your Handbook Might Need Immediate Changes

Insights

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Welcome to FP Snapshot on Manufacturing Industry, where we take a quick snapshot look at the most significant workplace law developments over the past month with an emphasis on how they impact manufacturers. This edition is devoted to the new Labor Board decision affecting workplace rules – for both unionized and non-unionized employers. Any employer maintaining handbooks or workplace policies should take note of this important decision.

Snapshot Look at the New Case

On August 2, the National Labor Relations Board issued a long-anticipated decision on how it will interpret workplace rules for both unionized and non-unionized employers. In *Stericycle, Inc.*, the Board dismantled an employer-friendly standard in favor of a framework that will expose employers to liability for unfair labor practice (ULP) charges if they maintain numerous common-sense workplace rules.

Under the new *Stericycle* standard, the Board will now find that a challenged workplace rule is presumptively unlawful if it has a “reasonable tendency” to chill non-supervisory employees from exercising their rights to engage in concerted protected activities for mutual aid and protection under the National Labor Relations Act (otherwise known as Section 7 rights). The employer maintaining the rule may only rebut this presumption of unlawfulness by proving that the rule advances a legitimate and substantial business interest, and that they are unable to advance that interest with a more narrowly tailored rule.

You can read about the decision in detail here.

What do Manufacturers Need to Know?

The *Stericycle* decision has set the stage with the new framework, but it remains to be seen how aggressive the Board will be on certain types of rules. Based on other activities from the Board, manufacturers should expect that it will heavily scrutinize all sorts of workplace rules.

- For example, manufacturers may have trouble if they maintain a workplace rule **simply requiring employees to respect each other**. This is because the Board could find this has a

reasonable tendency to prohibit employees from criticizing their co-workers for not wanting to join a union.

- Rules that overly regulate **employees' posts on social media** could be viewed by the Board as having a reasonable tendency of restricting employees' rights to discuss the terms and conditions of employment.
- Theoretically, rules **prohibiting insubordination** could be seen by the Board as having a reasonable tendency to prohibit lawful concerted work stoppages.
- Many manufacturers have rules **prohibiting cell phones, video, photography, or audio recording** in certain areas of their facilities. This makes sense given the need to protect proprietary products and processes on the manufacturing floor. However, the Board's new decision says that employees have the right to use smart phones to take photographs or videos as part of concerted protected activities, such as documenting unsafe work practices. Therefore, the Board may find any blanket rule prohibiting cell phones or recording presumptively unlawful. While you may argue you have a substantial interest in protecting proprietary information, the Board will now require you to prove you were not able to have a more narrowly tailored rule to satisfy the new standard.

Meeting the Board's strict expectations for handbooks and workplace policies will take careful review. Manufacturers should consult with legal counsel to ensure they are in a good position to defend any challenge to their handbooks and policies.

Want More?

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Related People



William E. Altman
Regional Managing Partner
248.433.8710
Email



Benjamin Dudek
Partner
803.255.0000
Email

Service Focus

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