

IS THE LAW ON HANDBOOKS CHANGING AGAIN? 5 STEPS FOR EMPLOYERS AFTER NLRB GENERAL COUNSEL'S NEW GUIDANCE ON WORK RULES

Insights
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The National Labor Relations Board's General Counsel just issued guidance last week addressing how Regional Offices should approach enforcement of unfair labor practice charges involving employer work rules and handbook provisions. While the memo does *not* change the Board's law on work rules, it does signal the beginning of an important shift – and we expect less scrutiny of workplace rules by the NLRB under the current administration. Here's what you need to know about the GC's February 27 guidance memo and five practical steps to consider taking now.

Why This Matters Now

The General Counsel's guidance suggests that the agency *less aggressive in pursuing marginal work-rules cases*, but **not immunize such rules from challenge**. Employers cannot assume that your policies are beyond scrutiny because enforcement resources will be prioritized. Read on for a dis of the current law, the GC memo's impact, and key complia steps.

Prior Policy: From Boeing to Stericycle

This development comes in the wake of [the NLRB's 2023 Stericycle decision](#), which overruled the prior, more

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employer-friendly *Boeing* framework and adopted a stricter standard for evaluating work rules and policies.

- Under the Biden-era *Stericycle*, a work rule is **presumptively unlawful** if an employee could *reasonably interpret* it as chilling protected concerted activity under Section 7 of the National Labor Relations Act (NLRA). The employer bears the burden of proving that the rule advances a legitimate and substantial business interest and cannot be narrowed further.
- During the first Trump administration, employers relied on [the NLRB's 2017 Boeing standard](#), which categorized work rules and afforded more predictability – and in many cases greater deference to legitimate employer interests. Under *Boeing*, some categories of rules were considered *per se* lawful, and ambiguous rules were construed in light of employer interests.
- *Stericycle* marked a dramatic departure: it abandoned category-based treatment and replaced it with a more subjective, employee-centric inquiry into whether a rule might chill concerted activity. This shift made many workplace civility rules, confidentiality provisions, and other neutral-sounding policies vulnerable to challenge under the NLRA.

New GC Memo is Not a Change in Law

The General Counsel's latest memo instructs Regional Offices to take a *more selective* approach in pursuing work-rules cases, signaling that the General Counsel's Office *will not aggressively prosecute every technical or marginal rules issue*. Regional Offices are encouraged to focus on core cases that clearly implicate employee rights rather than expand charges in borderline situations. Importantly:

- **This guidance does *not* change the legal standard under *Stericycle*.** *Stericycle* remains binding law unless and until the Board itself overrules it – and this memo explicitly operates *within* existing legal frameworks rather than rewriting them. We expect the NLRB to address *Stericycle* over the next few years and [likely revert to a broader interpretation of work rules](#).
- **The memo reflects enforcement discretion**, not a statutory or Board-level rulemaking. In other words, it

guides how the General Counsel's Office *chooses to enforce* current law; it doesn't alter the *law* itself.

Key employer takeaway: While the NLRB's enforcement posture may be less aggressive than the previous administration, the standard *Stericycle* set a presumption of unlawfulness for rules reasonably read to chill Section 7 activity – and continues to apply in active cases.

5 Practical Steps for Employers

1. Re-Evaluate Your Work Rules Under *Stericycle*

Even if the General Counsel's Office is narrowing pursuit, *Stericycle* still governs whether a rule is presumptively unlawful. You should carefully assess whether any policy could reasonably be interpreted to constrain Section 7 rights and determine the specific business purpose behind all rules.

2. Update Handbooks with Clear Justifications

When retaining rules that might be susceptible to *Stericycle* challenges, document legitimate and substantial business justifications that are narrowly tailored. Ambiguous language should be clarified to avoid misinterpretation.

3. Train HR and Compliance Staff

Ensure staff responsible for drafting and enforcing policies understand how Section 7 protections function and that all rules are designed to enforce legitimate business purposes.

4. Monitor NLRB Enforcement Trends

With the General Counsel's Office indicating shifting priorities, you should stay attuned to how Regional Offices interpret and prioritize rules cases in practice. As mentioned above, we expect the NLRB to revisit *Stericycle* during this administration and likely return to a standard more like *Boeing*.

5. Seek Legal Review Before Implementation

Have labor counsel review new or revised policies before they go live, especially in unionized workplaces or organizations with heightened risk of unfair labor practice charges.

Conclusion

The General Counsel's latest memo provides important enforcement context – and perhaps a bit of welcome

reprieve for employers – but it does *not* alter the legal landscape established by *Stericycle*.

We will continue to monitor NLRB developments and provide updates as information becomes available. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. Any questions may be directed to your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Labor Relations Practice Group](#).