



NLRB Upholds Rule Prohibiting Cell Phones In Work Areas – But Does The Decision Help Your Organization?

Insights

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The National Labor Relations Board just found that a beverage manufacturer's rule prohibiting cell phones on the shop floor and work stations did not violate the National Labor Relations Act. The Board's May 20 decision recognized that this rule would potentially infringe on employees' ability to make calls or recordings about workplace issues. On balance, however, it held that any such infringement was outweighed by the company's legitimate business justifications for the policy. The decision is potentially a big win for manufacturers, but only to the extent they can articulate sufficient safety- or business-related justifications for prohibiting personal cell phones in the workplace.

Background

Cott Beverages operates 15 facilities nationwide, including one in San Antonio that was called upon to defend the policy at issue. The company produces and packages carbonated soft drinks, juices, and purified water. In order to ensure worker safety and the integrity of its production process, the company maintains a policy prohibiting employees from possessing non-company issued cell phones and other personal items, such as purses, medications, and music devices, on the manufacturing floor or at their work stations.

Boeing Standard

In its 2017 *Boeing* decision, the Board established a new framework for analyzing whether facially neutral workplace rules, such as the one at issue in *Cott Beverages*, unlawfully infringe on employee rights. When evaluating a facially neutral policy, rule, or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the *Boeing* standard calls upon the Board to evaluate two things: (1) the nature and extent of the potential impact on NLRA rights, and (2) legitimate justifications associated with the rule. When the balance favors the employer's interests, the rule is lawful. When the potential interference with protected rights outweighs any possible employer justifications, it is deemed unlawful.

The *Boeing* Board established a trio of categories for work rules, including one designated as "lawful to maintain." Many assumed that this category would include rules designated as *always* lawful to maintain. However, the *Cott Beverages* case seems to dispel the notion that such rules are always lawful, without regard to surrounding circumstances.

Competing Interests At Cott Beverages

Applying the *Boeing* standard, the *Cott Beverages* Board first found that the company's policies potentially infringe on employee rights under the NLRA. The policies in question no doubt restrict employees' ability to make not only audio or video recordings, but also to communicate with each other about workplace issues or photograph working conditions.

The Board pointed out, however, that nothing in the rules restricted employees from retrieving their phones from lockers and using them on their own time when away from work stations. Thus, the Board concluded that the rules' potential infringement on employee rights was "relatively slight."

Turning to the company's stated justifications, the Board found that the broad prohibition on personal cell phone possession was a "reasonable, lawful effort" to ensure integrity of the beverage production process and satisfy FDA requirements. The Board further found that, because of the unique distractions posed by cell phones — especially in manufacturing areas — a blanket prohibition was a reasonable restriction to reduce the risks of accidents.

On balance, the Board concluded that the company's legitimate business interests outweighed the "relatively slight" infringement on employee rights. Consequently, the agency held that the company's cell phone rule fell into the "lawful to maintain" category. In reaching this holding, the Board rejected the notion that the rules could have been drafted more narrowly to protect employee rights, noting that *Boeing* foreclosed such an argument.

What This Means For Employers

Although the Board in *Boeing* established a category for workplace rules that were "lawful to maintain," and concluded in *Cott Beverages* that a blanket restriction on personal cell phones in work areas fell into that category, its analysis confirms that such a prohibition is not *always* lawful. Instead, it depends on whether the employer's legitimate business interests outweigh any potential infringement on employee rights.

Thus, while the *Cott Beverages* decision may be coined a victory for manufacturers, it potentially undermines the legitimacy of cell phone rules maintained by employers who might not be able to articulate sufficient justifications for an outright prohibition. This could especially be true for those in the retail, hotel, or professional services industries.

We will continue to monitor any developments on this decision and provide updates, so be sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions about this decision or desire a review of your policies, please contact your Fisher Phillips attorney or any member of our [Labor Relations Practice Group](#).

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