

D.C. Circuit Enforces NLRB Handbook Decision

NOVEMBER 10, 2015

As we have reported in previous briefings, the National Labor Relations Board (NLRB or Board) has considerably increased its scrutiny of employee handbook policies and work rules. In March 2015, the Board's General Counsel, Richard F. Griffin, released a lengthy report, [GC 15-04](#), addressing recent NLRB case developments in the context of employee handbook rules. (See our [client briefing](#).) A recent Board ruling invalidating provisions of an employee handbook has now been partially upheld by the U.S. Court of Appeals for the District of Columbia Circuit. On November 7, 2015, the D.C. Circuit held that the NLRB appropriately ruled that Hyundai American Shipping Agency Inc.'s "investigative confidentiality," "electronic communications," and "working hours" rules violated Section 8(a)(1) of the National Labor Relations Act (NLRA). *Hyundai Am. Shipping Agency, Inc. v. NLRB*, No. 11-1351 (D.C. Cir. Nov. 6, 2015). In contrast, the circuit court declined to enforce the Board's decision to invalidate Hyundai's "complaint provision" and "personnel files" rules.

Section 8(a)(1) prohibits employers from "interfer[ing] with, restrain[ing], or coerc[ing] employees in the exercise of" their Section 7 rights to organize, bargain collectively, and engage in similar concerted activities. The Board determined Hyundai's "investigative confidentiality" rule violated the Act because it purportedly prohibited employees from revealing information about matters under investigation. The D.C. Circuit agreed, concluding the "blanket confidentiality rule clearly limited employees' Section 7 rights to discuss their employment." Hyundai argued that it had a legitimate business justification for the rule, in that federal and state antidiscrimination statutes and guidelines require confidentiality in many investigations. The circuit court nonetheless found the rule to be overbroad, holding that Hyundai did not provide a legitimate business justification for banning discussion of investigations that did not implicate antidiscrimination laws.

The D.C. Circuit similarly found that employees could reasonably construe Hyundai's "electronic communications" and "working hours" rules as prohibiting Section 7 activity. Hyundai's "electronic communications" rule admonished employees to "only disclose information or messages from theses [sic] systems to authorized persons." The court agreed with the Board that employees could read the rule as prohibiting them from sharing not just confidential information, but also information that concerned the terms and conditions of their employment. Likewise, the D.C. Circuit held that Hyundai's "working hours" rule, which prohibited "[p]erform[ing] activities other than Company work during working hours[.]" could be interpreted as prohibiting employees from engaging in union activity during breaks.

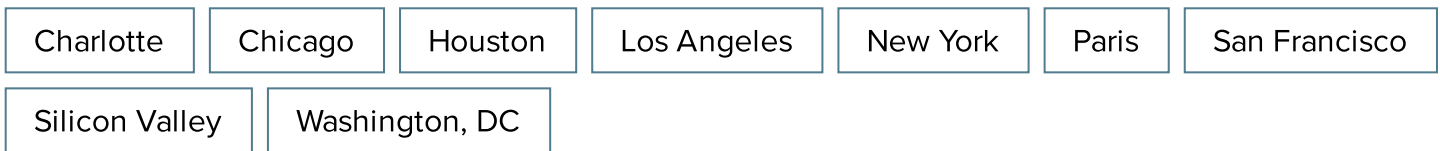
Contrastingly, the D.C. Circuit reversed the Board’s invalidation of Hyundai’s “complaint provision,” which urged employees to voice their complaints directly to their supervisors or to human resources. The circuit court determined that a reasonable employee would not read the rule as prohibiting complaints protected by Section 7 as the policy was “neither mandatory nor preclusive of alternatives.” Moreover, the court noted that the provision did not prescribe penalties for making complaints to other employees.

The D.C. Circuit additionally determined that the Board lacked jurisdiction to invalidate Hyundai’s “personnel files” rule, which concerned information maintained in the company’s personnel files. As the Board’s General Counsel failed to allege that the rule played a role in the employee’s dismissal in the case underlying the Board’s decision, the court reversed the Board’s order with respect to the rule.

Employers should review their handbook policies to consider whether changes may be warranted in light of the Board’s recent guidance and rulings.

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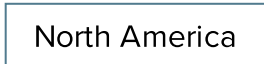
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