

LEGAL NEWS FOR YOUR BUSINESS

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Employment Alert

NLRB'S APPROACH TO ANALYZING WORK RULES

The National Labor Relations Board (NLRB) recently adopted a new standard for assessing the validity of workplace rules. Under this new standard, as articulated in *Stericycle, Inc. and Teamsters Local 628*, 372 NLRB No. 113 (2023), a workplace rule is presumed unlawful if an employee could reasonably interpret the rule to restrict his/her rights under Section 7 of the National Labor Relations Act, which protects the right to join or form labor organizations and engage in activities for the purpose of collective bargaining. If a workplace rule is presumptively unlawful, an employer only may maintain the rule by showing that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule.

Under the new standard, the NLRB analyzes workplace rules from the perspective of a reasonable employee who "contemplates Section 7 activity, but who wishes to avoid the risk of being disciplined or discharged for violating the work rule." To establish the presumption that a workplace rule is unlawful, the General Counsel must prove that an employee could reasonably interpret the workplace rule to restrict Section 7 activity. Any ambiguities will be construed against the employer and the presumption can be raised even if the rule reasonably could be interpreted not to restrict Section 7 activity. Employers then must rebut the presumption by demonstrating that the rule advances a legitimate and substantial interest that cannot be advanced with a more narrowly tailored rule.

The case-by-case approach of the new standard represents a shift from the previous standard, which sorted workplace rules into categories. In establishing the *Stericycle* standard, the NLRB's goal is to achieve the proper balance between protecting employees' rights and accommodating employers' legitimate and substantial business interests in maintaining their rules.

Given this new approach, employers should review their work rules and ensure that they are narrowly tailored to achieve the desired goal. Employers should also make sure to clarify any ambiguities in work rules.

If you have any questions about the recent NLRB decision, please reach out to any member of Gardner Skelton's employment team.



NICOLE GARDNER
(704) 390-7007 direct
nicole@gardnerskelton.com



MARK PINCUS
(704) 390-7043 direct
mark@gardnerskelton.com



KRIS FINLON
(704) 390-7032 direct
kfinlon@gardnerskelton.com



contactus@gardnerskelton.com | www.gardnerskelton.com
505 East Boulevard Charlotte, NC 28203