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- What do activities include?
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  - E.g. terms and conditions of employment
- ER may not interfere with, restrain, or coerce EEs from exercising Section 7 rights

# **Discussion From Last Year- as Result of Boeing- New Memo Issued by NLRB GC**

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- 1 Rules that are generally lawful to maintain
- 2 Rules warranting individualized scrutiny
- 3 Rules that are plainly unlawful to maintain

# Category **1** Generally Lawful to Maintain

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- Prohibition vs. disparaging or offensive language



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- Rules vs. using employer logos or intellectual property

**Category  
Scrutiny**

**2**

**Rules Warranting Individualized**

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- Restriction of speaking to media or third parties
- Banning of off-duty conduct that might harm employer

## **Category 3 Plainly unlawful to maintain**

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- Confidentiality rules regarding wages, benefits, or working conditions



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- Confidentiality rules regarding wages, benefits, or working conditions
- Rules against joining outside organizations or voting on matters concerning the employer



# **Workplace Civility Rules Upheld by NLRB GC**

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  - prohibited disparaging comments online about ER
  - restricted EEs from speaking on behalf of the ER on social media
  - prohibited the sharing of confidential information online
  - prohibited the use of cellphone cameras
- Portions of work rules prohibiting disparaging comments online about ER, and prohibiting use of the ER’s electronic system **unlawful**; overbroad

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- “I will not complain about another team member and ask you not to as well. If I hear you doing so, I will ask you to talk to that person.”
- “I will be committed to finding solution to problems rather than complaining about them or blaming someone for them, and ask you to do the same.”
- “I have reviewed policies ..... from the Employee Guidebook as well as... that state the use of my cellphone is prohibited by all [employees] unless during my scheduled breaks and I should only use my cell phone in designated areas.”



**In other words... not this:**







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- ER had work rules, including one that prohibited employees from disclosing “wage and salary information” to one another
- What result by our employer-friendly NLRB?

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- Comp. disciplined for being unkempt and not wearing proper uniform
- Discipline letters to Comp. including language prohibiting discussion of the discipline with coworkers or clients

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  - Conflict of interest
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- What result?



# Security is a serious job, after all







**Termination upheld!**

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- But, policy prohibiting EES from criticizing Company, and discipline letter prohibiting EEs from discussing discipline with workers or clients violated NLRA

# Termination upheld!

- But, policy prohibiting EES from criticizing Company, and discipline letter prohibiting EEs from discussing discipline with workers or clients violated NLRA
- Despite termination being based in part on unlawfully overbroad rules, FB video did not constitute PCA, and was so egregious that other EES would not connect the term to the overbroad portion of the rules



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- Lower-tier EE voices concerns about lack of representation
- “Wolf Pack” Facebook group
- EE files charge against Union. What result?





# **Violation of the Act!**

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- FB group had tendency to restrain and coerce employees, by excluding, ostracizing, and humiliating them

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- Supervisor overheard conversation and wrote email to all EEs that EEs should never use profanity in bathroom, especially about clients.
- Investigation conducted. EE fired.

**You would not curse at a customer, right?**











**ALJ reversed!!**

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- Not protected activity!

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- Not protected activity!
- EEs conduct not “concerted” nor engaged in for the purpose of “mutual aid and protection.” Conduct was “mere griping.”

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- What result?





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On what grounds?

- Concerted activities may be found to be unprotected only when they involve conduct that is unlawful, violent, or otherwise indefensible
- EEs did not disclose SSI or make maliciously false statements
- Prohibiting EEs from talking to media “at any time” is overbroad and could be reasonably construed to prohibit section 7 activity

# **Can an Employer Ban an Ex-Worker from Premises?**



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- What result?



**ER found to have violated NLRA!**

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- Violation of section 8—interference with EE rights (former EE) in her exercise of rights under section 7

# ER found to have violated NLRA!

- Violation of section 8—interference with EE rights (former EE) in her exercise of rights under section 7
- Banning former EE was direct retaliation for her participation in class/collective action

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- In the secure area, there was cash, personnel files, financial documents
- ER investigated, and termed EE
- Is this protected activity? What was result?





**Term upheld!**



# Term upheld!

- While protected activity, EE's misconduct was so egregious it lost the protection of the NLRA

# **Union Friendly Joint Employer Standard Restored**

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- Under Browning, joint employment relationship can exist when one entity merely “reserved” the right to exercise joint control over terms/conditions of another entity’s EEs



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- Under Browning, joint employment relationship can exist when one entity merely “reserved” the right to exercise joint control over terms/conditions of another entity’s EEs
- What happened next?

