

# Do's and Don'ts for Employer Policies (So Says NLRB GC)

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On March 18, 2015, the General Counsel of the NLRB issued a report providing guidance to employers regarding handbook rules which violate Section 8(a)(1) of the NLRA as well as specimen policies which don't violate the Act in the General Counsel's opinion.

While the U.S. Court of Appeals and perhaps the U.S. Supreme Court may have something to say about this issue, this blog entry presents the first two of the areas addressed by the General Counsel's report.

## Confidentiality Rules:

These violate the law according to the General Counsel:

- Do not discuss “customer or employee information” outside of work, including “phone numbers [and] addresses.”
- “You must not disclose proprietary or confidential information about [the employer, or] other associates (if the proprietary or confidential information relating to [the Employer’s] associates was obtained in violation of law or lawful Company policy).
- “Never publish or disclose [the Employer’s] or another’s confidential or other proprietary information. Never publish or report on conversations that are meant to be private or internal to [the Employer].”
- Prohibiting employees from “[d]isclosing ... details about the [Employer].”
- “Sharing of [overheard conversations at the work site] with your co-workers, the public, or anyone outside of your immediate work group is strictly prohibited.”
- “Discuss work matters only with other [Employer] employees who have a specific business reason to know or have access to such information ... Do not discuss work matters in public places.”

- “[I]f something is not public information, you must not share it.”
- Confidential Information is: “All information in which its [sic] loss, undue use or unauthorized disclosure could adversely affect the [employer’s] interests, image and reputation or compromise personal and private information of its members.”

According to the General Counsel, these are lawful under the NLRA:

- No unauthorized disclosure of “business ‘secrets’ or other confidential information.”
- “Misuse or unauthorized disclosure of confidential information not otherwise available to persons or firms outside [Employer] is cause for disciplinary action, including termination.”
- “Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.”
- Prohibition on disclosure of all “information acquired in the course of one’s work.”

#### Employee Conduct Toward Company and Supervisors

Not lawful:

- “[B]e respectful to the company, other employees, customers, partners, and competitors.”
- Do “not make fun of, denigrate, or defame your co-workers, customers, franchisees, suppliers, the company, or our competitors.”
- “Be respectful of others and the Company.”
- No “[d]efamatory, libelous, slanderous or discriminatory comments about [the Company], its customers and/or competitors, its employees or management.”
- “Disrespectful conduct or insubordination, including, but not limited to, refusing to follow orders from a supervisor or a designated representative.”
- “Chronic resistance to proper work-related orders or discipline, even though not overt insubordination” will result in discipline.
- “Refrain from any action that would harm persons or property or cause damage to the Company’s business or reputation.”
- “[I]t is important that employees practice caution and discretion when posting content [on social media] that could affect [the Employer’s] business operation or reputation.”
- Do not make “[s]tatements “that damage the company or the company’s reputation or that disrupt or damage the company’s business relationships.”

- “Never engage in behavior that would undermine the reputation of [the Employer], your peers or yourself.”

These are okay:

- No “rudeness or unprofessional behavior toward a customer, or anyone in contact with” the company.
- “Employees will not be discourteous or disrespectful to a customer or any member of the public while in the course and scope of [company] business.”
- “Each employee is expected to work in a cooperative manner with management/supervision, coworkers, customers and vendors.”
- “Each employee is expected to abide by Company policies and to cooperate fully in any investigation that the Company may undertake.”
- “Being insubordinate, threatening, intimidating, disrespectful or assaulting a manager/supervisor, coworker, customer or vendor will result in” discipline.

In the same report, the General Counsel presented provisions of Wendy’s International LLC with which the General Counsel had reached a settlement over handbook provisions.

Here are the alleged unlawful provisions regarding confidentiality and employee conduct:

Unlawful:

- During the course of your employment, you may become aware of confidential information about Wendy’s business. You must not disclose any confidential information relating to Wendy’s business to anyone outside of the company. Your employee PIN and other personal information should be kept confidential. Please don’t share this information with any other employee.
- Soliciting, collecting funds, distributing literature on Company premises without proper approvals or outside the guidelines established in the “No Solicitation/No Distribution” Policy.
- Walking off the job without authorization.
- Threatening, intimidating, foul or inappropriate language.
- False accusations against the Company and/or against another employee or customer.

Pursuant to the settlement, these got the blessing of the General Counsel’s office:

- During the course of your employment, you may become aware of trade secrets and similarly protected proprietary and confidential information about Wendy's business (e.g. recipes, preparation techniques, marketing plans and strategies, financial records). You must not disclose any such information to anyone outside of the Company. Your employee PIN and other similar personal identification information should be kept confidential. Please don't share this information with any other employee.
- Soliciting, collecting funds, distributing literature on Company premises outside the guidelines established in the "No Solicitation/no Distribution" Policy.
- Leaving Company premises during working shift without permission of management.
- Threatening, harassing (as defined by our harassment/discrimination policy), intimidating, profane, obscene or similar inappropriate language in violation of Company policy.
- Making knowingly false accusations against the Company and/or against another employee, customer or vendor.

Further blog articles will address the remainder of the General Counsel's report.