

NLRB: Employer Allowed to Ban Cellphones in Beverage Production and Warehouse Working Areas

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In another decision recognizing employers' rights to issue reasonable prohibitions even if they have some slight impact of employees' right to engage in concerted activity under the National Labor Relations Act, a beverage manufacturer's rules banning cell phones in food production and warehouse working areas was recently upheld by the National Labor Relations Board. *Cott Beverages Inc.*, 369 NLRB No. 82 (2020).

The manufacturer justified its cell phone ban based on two general concerns. First, the presence of cell phones in the food production area risked potential contamination of the beverage product. Indeed, the United States Food and Drug Administration requires the manufacturer "to establish and follow practices to minimize hazards inherent in food production." Slip op. at 2. Second, the employer justified the warehouse cell phone ban on the basis that "warehouse employees operate five-to-six forklifts in a high traffic environment, and the distractions associated with cell phones create a safety risk." *Id.*

The Board acknowledged that the cell phone ban potentially infringed on Section 7 rights "by restricting employees' ability to . . . make audio or video recordings, . . . to communicate with each other about workplace issues or to take photographs of working conditions." Slip op. at 3. However, the Board found the potential infringement to be relatively slight, because the ban applied only to the food production and warehouse working areas. The rule did not apply to non-working areas. "Indeed, nothing in the rules restricts employees from retrieving their phones from their lockers and using them on their own time when away from their workstations." *Id.*

On the other hand, the Board accepted that the manufacturer's rules were reasonable to "ensure the integrity of the . . . beverage production process and to satisfy FDA requirements for food production facilities." *Id.* Further, the Board agreed that the "unique distractions" posed by cell phones made restricting them reasonable not only for food production concerns, but also because of concerns about on-the-job accidents, particularly in the warehouse. *Id.*

In reversing the administrative law judge, the Board also held that it was irrelevant whether the manufacturer's rules could have been drafted more narrowly. Instead, the pertinent question was

whether the manufacturer's business justifications outweighed the slight impact on Section 7 rights, not whether the rules could have been more narrowly drafted. Because the manufacturer's legitimate business interests outweighed the slight impact, the rules were upheld.

It is important to note that this decision does not hold that rules banning cell phones are automatically valid in the workplace. The employer must identify legitimate business reasons for such a rule, and they must outweigh any infringement on Section 7 rights of the affected employees.

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