

Trump Board Overrules Workplace Rules Analysis

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In a stunning development, the National Labor Relations Board has decided that when determining the legality of a facially neutral rule under the National Labor Relations Act, it will consider (i) the nature and extent of the potential impact on rights protected by the Act, and (ii) legitimate justifications associated with the rule.

By a vote of 3-2, the Board overturned *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), under which many seemingly innocuous workplace rules were found illegal. Under the *Lutheran Heritage* standard, employer rules violated the NLRA if the rules could be “reasonably construed” by an employee to prohibit the exercise of NLRA rights.

In addition, the Board established three categories of rules to provide greater clarity and certainty to employees, employers, and unions.

The first category will include rules the Board designates as lawful to maintain.

The second will include rules the Board designates as requiring individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, but nonetheless lawful to maintain because any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.

The third will include rules the Board designates as unlawful to maintain because they would prohibit or limit NLRA-protected conduct and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule.

The Board also expressly overruled decisions finding that it violates the Act to maintain rules requiring employees to foster “harmonious interactions and relationships” or to maintain basic standards of civility in the workplace.

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