

Court Upholds T-Mobile's Positive Workplace Environment Rules

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It was unreasonable for the National Labor Relations Board (NLRB) to strike down T-Mobile USA Inc.'s workplace policy requiring employees to maintain a positive work environment, according to the 5th U.S. Circuit Court of Appeals.

The National Labor Relations Act gives employees the right to engage in activities intended to improve the terms and conditions of their employment. To enforce that right, the act makes it illegal for employers to interfere when employees engage in reasonably related activities.

In 2014, the board brought a complaint against T-Mobile, alleging that several of the provisions of T-Mobile's employee handbook violated the act.

T-Mobile's employee handbook 1) encouraged employees to maintain a positive work environment; 2) prohibited arguing or fighting, failing to treat others with respect, and failing to demonstrate appropriate teamwork; 3) prohibited all photography and audio or video recording in the workplace; and 4) barred access to electronic information by nonapproved individuals. The NLRB determined that all four provisions violated the act because each of them discouraged unionizing or engaging in concerted activity reasonably related to improving employees' working conditions.

On appeal, the 5th Circuit held that the board erred in finding that the first, second and fourth policies interfered with employees' rights. The test of whether a policy violates the act is whether a "reasonable employee would construe the policy as prohibiting protected activity," according to the 5th Circuit. Recently, the board used an aggressive interpretation of this standard in policing workplace rules by focusing on how an individual employee *could* understand a rule rather than how most workers likely would understand the rule.

The court rejected the NLRB's aggressive interpretation and reiterated that the appropriate, objective inquiry is not whether the rules "could conceivably be read to include activity protected by the act, even though that reading is unreasonable," but rather whether "a reasonable employee reading the rules would construe them to prohibit conduct protected by the act."

The court said there was no indication that T-Mobile's rules were designed to curb protected activity and that most workers would understand the rules to require "getting along with everybody, common sense, and people skills." The court elaborated that "a reasonable employee would be fully capable of engaging in debate over union activity or working conditions, even vigorous or heated debate, without inappropriately arguing or fighting, or failing to treat others with respect."

However, the court did say that T-Mobile's policy prohibiting all recording in the workplace could be read as a ban on protected activity. For example, the policy could be construed as prohibiting an employee from taking a photo of a wage schedule posted on a bulletin board.

T-Mobile USA Inc. v. NLRB, 5th Circuit, No. 16-60284 (July 25, 2017).

Professional Pointer: With the ruling from the 5th Circuit in the T-Mobile case, coupled with a new administration, it is likely that the NLRB will rein in some of its recent positions regarding workplace rules. However, employers should continue to be diligent in analyzing their workplace rules to make sure that they would not reasonably be construed as efforts to interfere with their employees' rights to engage in activities designed to unionize or otherwise improve work conditions.

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