

# Compliance & Ethics Professional

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# The NLRB attacks codes of conduct

If you do business in the U.S. and have a code of conduct or employee handbook in this country, then here is something for your “Must Read” list. The General Counsel of the National Labor Relations Board (NLRB) has issued his “Report of the General Counsel Concerning



Murphy

Employer Rules,” March 18, 2015. This 30-page memo could just as well be titled: “Why the language you have used in your code of conduct for years violates the National Labor Relations Act.” I suggest you read it and then count how many times your code of conduct, HR handbook, employee manual, etc., may be violating US federal law.

For example, which of these statements would you think is illegal?

- A. Do not discuss “customer or employee information” outside of work, including “phone numbers [and] addresses.”
- B. “Be respectful to the company, other employees, customers, partners, and competitors.”
- C. Do not make “insulting, embarrassing, hurtful, or abusive comments about other company employees online,” and “avoid the use of offensive, derogatory, or prejudicial comments.”
- D. “[A]ssociates are not authorized to answer questions from the news media. ...When approached for information, you should refer the person to [the Employer’s] Media Relations Department.”

Answer: Every single one of these is said by the NLRB general counsel to be illegal.

The second time you read the memo you might want to be sitting with an experienced labor lawyer, who can try to explain why language that seems to be almost identical violates the law in one example, but complies with the law with some very minor differences.

I do give the NLRB credit for trying to spell out at the end of the memo what would be acceptable language. But what the NLRB has done here is venture into the field of Compliance and Ethics without close consultation with those in the field and without sufficient regard for the important public policy behind compliance and ethics programs.

Rather than proceeding by enforcement actions (i.e., regulation by ambush) or by fiat, there should be structured interaction with the Compliance and Ethics community and clear respect and deference for our mission. Yes, labor laws are important, but the mission of compliance and ethics professionals is indispensable if we are to prevent violations and harm from companies and other large organizations. We should not be attacked for doing this. And we should not be forced to divert our limited time and resources away from fighting corruption, money-laundering, cartels, and other serious misconduct, to spend countless hours parsing every word in our codes to see if they would hold up against a regulatory game of “gotcha.”

This is a serious mistake by the NLRB and one that should not go unchecked. \*

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