



# Handbook Updates Stemming from the *Stericycle* Decision

8.17.23

# Agenda

**1** What is the NLRB?

**2** *Stericycle* Explained

**3** Practical Implications

**4** Q&A

# The National Labor Relations Board

- Created by the National Labor Relations Act of 1935 including a 5 person board and a General Counsel
- The Board prevent unfair labor practices and protects employees' rights to organize and bargain collectively. These are known as **“concerted activities”** and are protected under Section 7 of the NLRA
- The law does not cover government employees, agricultural laborer, independent contractors, and supervisors (with some exceptions).

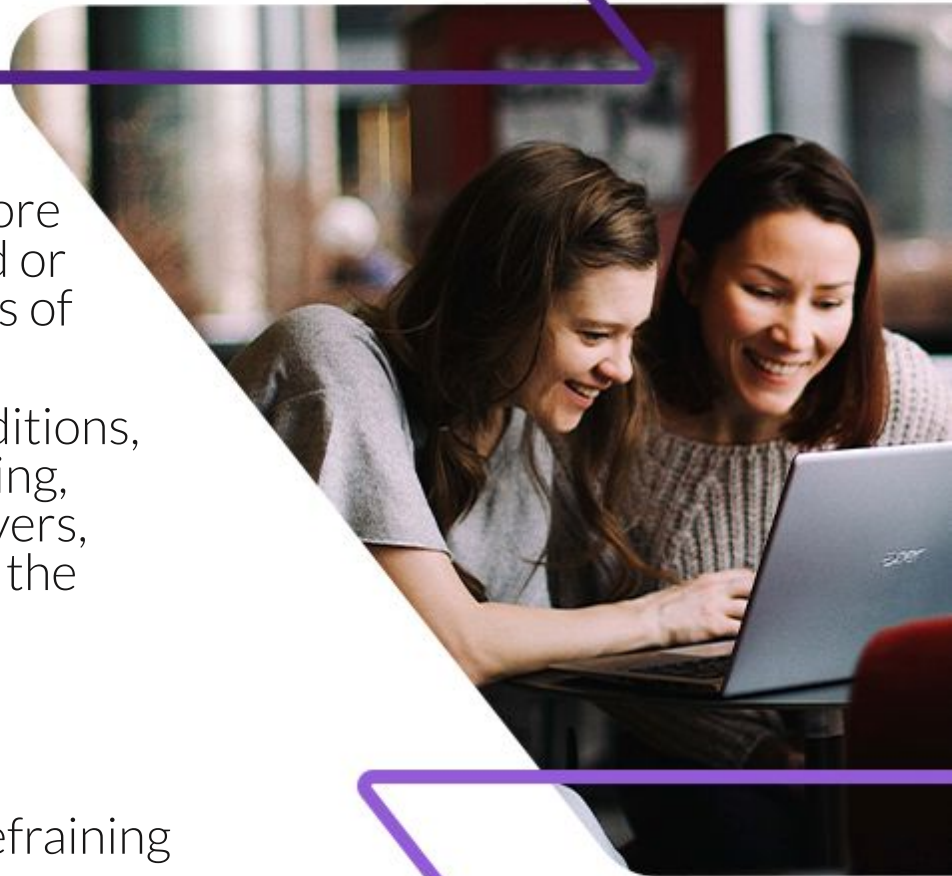
# Section 7 Rights

**Concerted Activities** - when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment.

This includes: talking about wages or conditions, petitioning for better hours, lawfully striking, joining with co-worker to talk with employers, government agencies, or the media about the workplace.

## Union Activities

Forming, attempting to form, joining, or refraining



# Stericycle, Inc. and Teamsters Local 628

## 1 Overrules Previous Cases

- *Boeing Co. (2017)* and *LA Specialty Produce Co. (2019)*.
- Taken together, these cases created a balancing test to measure a work rule's enforceability.
- The nature and extent of potential impacts on employee's Section 7 rights were balanced against employers' legitimate justifications for the rule.

## 2 Shifts Analytical Perspective

- In this decision, the Board stated that the old test under *Boeing* and *LA Specialty Produce* placed too little emphasis on the chilling effect work rules have on economically dependent employees.
- The Board stressed the importance of employees' economic dependence and the coercive effect that can have.

## 3 Implements New Standard

- If the GC shows that a policy/rule has a reasonable tendency to chill employees from exercising their Section 7 rights, the rule becomes *presumptively unlawful*.
- That presumption can be rebutted.
- Employer must prove the policy protects a legitimate and substantial business interest, and cannot be more narrowly tailored.

# Starbucks Corp.

## “How We Communicate” Policy Ruled Overly Broad

### Vague Language

- “Partners\* are expected to communicate with other partners and customers in a *professional* and *respectful* manner at all times. The use of vulgar or profane language is not acceptable.”

### Used to Prohibit Section 7 Activity

- Two employees issued written warnings for criticizing supervisor’s dress code enforcement in private conversation at work.
- Employee terminated for using foul language in a private social media group exchange complaining about staffing issues.

### Failure to Rebut Unlawful Presumption

- ALJ recognizes that maintaining “basic standards of civility” is a legitimate and substantial business interest.
- Starbucks failed to show that interest could be advanced with a more narrowly tailored rule.

\*“Partners” is how Starbucks refers to its employees.

# Policies to Review

- Cell Phone
- Code of Conduct
- Confidentiality
- Conflict of Interest
- Equal Employment Opportunity
- Employee Dating
- Exit Interview
- Pay Transparency
- Protected Activities
- Outside Employment
- Social Media

Policy guidance under pre-Trump NLRB standard





# Practical Implications

- Review suspect employment policies
- Reevaluate your need for each policy
- Consider using disclaimers
- Document the need for your workplace rules



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