

PUBLICATION

Words Matter: D.C. Circuit Upholds (in part) NLRB's Ruling on Hyundai Handbook Policies

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A recent opinion from the D.C. Circuit Court of Appeals, *Hyundai Am. Shipping Agency, Inc. v. NLRB*, illustrates the importance of word choice in handbook policies under the watchful eye of the National Labor Relations Board (NLRB). In November 2015, the D.C. appellate court upheld in part the NLRB's finding that several seemingly innocuous Hyundai handbook policies violated the National Labor Relations Act (NLRA) ban on the promulgation of policies that interfere with, restrain or coerce employees in the exercise of their rights to organize, bargain collectively and engage in similar protected concerted activities.

The Court examined four Hyundai policies. The first was an oral rule prohibiting employees from discussing matters under investigation by the company. The Court agreed with the NLRB that the policy was unlawful in that it was so broad that it could reasonably be read to prohibit employee discussion regarding employment matters under investigation. Although the Court acknowledged that federal antidiscrimination laws and guidelines require confidentiality in many investigations, the policy as written did not limit the confidentiality requirement to only those types of investigations.

The second policy at issue directed employees to "only disclose information or messages from [Hyundai's email] systems to authorized persons." The Court upheld the NLRB's finding that the policy was unlawful because it did not limit its prohibition on disclosure to only confidential information, and thus could be read to include the sharing of information relating to the terms and conditions of employment. The Court also upheld the NLRB's finding that the third policy, prohibiting "perform[ing] activities other than Company work during working hours," was unlawful. The Court explained that the use of the term "working hours," rather than "working time," could reasonably be construed to include employee breaks, during which Hyundai could not legally restrict employees' concerted activity.

The Court disagreed with the NLRB's substantive findings with respect only to the fourth policy, which encouraged employees to voice complaints directly to their supervisors or human resources. The Court disagreed with the NLRB's conclusion that the policy could be interpreted to prohibit complaints voiced to others, finding that the policy's language was not mandatory and did not preclude alternatives.

This decision is a good reminder to employers to review their handbook policies carefully to ensure that they are worded to avoid overbroad prohibitions on employees' concerted activities. The NLRB has made clear its intent to examine employer policies with a fine-tooth comb. Employers must be ready.