

Employer Work Rules Need Review in Light of the National Labor Relations Board's Strict New Standard

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On August 2, 2023, the National Labor Relations Board (NLRB) issued its decision in *Stericycle, Inc.*, in which it articulated its new standard for evaluating whether employer work rules are impermissible under the National Labor Relations Act (NLRA). In doing so, the NLRB overturned the standard for evaluation of work rules set forth in two Trump-era NLRB decisions, *Boeing Co. (2017)* and *LA Specialty Produce Co. (2019)*. The *Stericycle* standard harkens back to the NLRB's standard for evaluation of work rules prior to the *Boeing Co.* decision, adopted in its *Lutheran Heritage* decision in 2004. The new standard applies equally to both union and non-union employers.

Under the *Stericycle* standard, the NLRB will deem a work rule to be unlawful if an employee could reasonably interpret the rule as having a coercive meaning or limit the exercise of their rights under Section 7 of the NLRA. To determine this, the NLRB will assess "the specific wording of the rule, the specific industry, and workplace context in which it is maintained, the specific employer interests it may advance, and the specific statutory rights it may infringe" to determine if the rule has a "reasonable tendency" to chill employees' exercise of their Section 7 rights. Significantly, the NLRB will not consider the employer's intent in its analysis. Under this standard, work rules must be narrowly tailored to "advance legitimate and substantial business interests," and cannot have the potential to interfere with employees' right to engage in protected concerted activity.

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While the *Stericycle* decision provides little guidance as to how this standard will be applied in practice, employers can still take steps to limit the risk of challenges to their work rules and are urged to do so as soon as possible. Employers must construct their work rules as narrowly as possible and avoid using language which could be interpreted as infringing upon employees' Section 7 rights. Employers should also review existing work rules to determine whether they may be deemed unreasonable under this new standard, and if any revisions are needed.

Please do not hesitate to contact your servicing Laner Muchin attorney with questions on the *Stericycle* standard or to have your work rules reviewed for compliance.