




MEMORANDUM

TO: ABA Members

FROM: Thom K. Cope, Partner Mesch Clark Rothschild 

DATE: August 2, 2018

FILE: 02023-1

RE: National Labor Relations Board (NLRA) Guidance on Handbook, June 2018

---

The NLRB has jurisdiction over almost every U.S. employer except public employers (i.e.: state local; federal employers). They are not happy when employee handbooks “restrict” the right of employees to speak out about “wages, hours and working conditions.” The NLRB uses a balancing test to determine whose right prevail: your’s or your employees.

But their more recent guidelines have relaxed the old handbook rules. Below are some examples of handbook provisions that as of right now are considered legal:

- “Conduct . . . that is inappropriate or detrimental to patient care of [sic] Hospital operation or that impedes harmonious interactions and relationships will not be tolerated.”
- “Behavior that is rude, condescending or otherwise socially unacceptable” is prohibited.
- Employees may not make “negative or disparaging comments about the . . . professional capability of an employee or physician to employees, physicians, patients, or visitors.”
- “Disparaging . . . the company’s . . . employees” is prohibited.
- Rude, discourteous or unbusinesslike behavior is forbidden.
- Disparaging, or offensive language is prohibited.
- Employees may not post any statements, photographs, video or audio that reasonably could be viewed as disparaging to employees.
- Employees may not “record conversations, phone calls, images or company meetings with any recording device” without prior approval.

## MEMORANDUM

August 2, 2018

Page | 2

- Employees may not record telephone or other conversation they have with their coworker, managers or third parties unless such recordings are approved in advance.
- “Being uncooperative with supervisors . . . or otherwise engaging in conduct that does not support the [Employer’s] goals and objective” is prohibited.
- “Insubordination to a manager or lack of . . . cooperation with fellow employees or guests” is prohibited.
- “Boisterous and other disruptive conduct.
- Creating a disturbance on Company premises or creating discord with clients or fellow employees.
- Disorderly conduct on Hospital premises and/or during working hours for any reason is strictly prohibited.
- “[I]nformation concerning customers . . . shall not be disclosed, directly or indirectly” or “used in any way.”
- Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendor or customers.
- No unauthorized disclosure of business secrets or other confidential information.
- Employees are forbidden from using the Company’s logos for any reason.
- “Do not use any Company logo, trademark or graphic [without] prior written approval.”

### UNACCEPTABLE PROVISIONS

- Employees are prohibited from disclosing “salaries, contents of employment contracts . . . .”
- Employees shall not disclose “any information pertaining to the wages, commissions, performance or identity of employees of the Employer.”

In addition, rules that expressly prohibit discussion of working conditions or other terms of employment should be considered unacceptable: i.e.:

Employees are prohibited from disclosing to “any media source” information “regarding employment at [Employer], the workings and conditions of [Employer], or any . . . staff member.”

There are many other rules in the Guidance. If you want a full copy, please email me at [tcope@mcrazlaw.com](mailto:tcope@mcrazlaw.com).