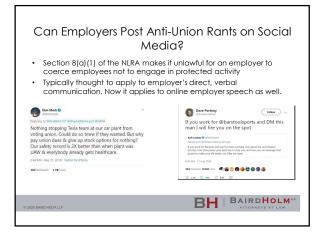


## Introduction

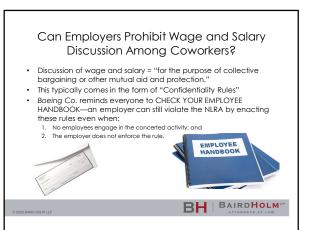
- Common NLRA Misperception.
- Landmines are plentiful for both union and non-union employers.
- Intent is to provide teaching tool for entire management team.

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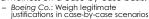




# Can Employers Require Confidentiality During Ongoing Investigations?

- Old Rule (Banner Estrella): An employer could not restrict discussion unless it proved a need for witness protection, protecting evidence, or avoiding fabricated testimony.
- testimony.

  New Rule (Apagee Retail):
  Investigative confidentiality is lawful when strictly limited to the duration of the investigation. If confidentiality is required affer the investigation is complete, the NLRB will determine its lawfulness on a case-by-case basis.



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Can Employers Prohibit Non-Business Use of Email?



- Back and forth NLRB swings...
  - 2007 landmark
  - -2014 reversal
  - December 2019 reset
- Beware of tricky enforcement.

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### Can Employers Prohibit Cell Phone Usage/Possession in Employer Vehicles?



- An employer can prohibit cell phone usage in settings where there is a legitimate justification (e.g. safety).

   Argos USA LLC: Prohibition of cell phones in heavy commercial trucks to increase employee and public safety is lawful.
- Cott Beverages Inc.: Prohibition of cell phones on the manufacturing floor and workstations is lawful.

Avoid making your phone usage policy too broad. It should not prohibit employees from documenting working conditions.

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### Can Employees Supporting Organizing Drives be Discharged for Performance Infractions?

- Unequivocal right to support representation balanced against ...
- The right to enforce performance and conduct standards.
- Evaluating past practice.







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### Can Employers Prohibit the Wearing of Union Buttons at Work?

- Wal-Mart Stores Inc.: The NLRB's position on this matter changes depending on the location
  - Prohibition is justified in locations where employees encounter customers because it enhances customer experience
- Where there is no customer contact, there is likely no justification for restricting union logos

  Overbroad content-neutral prohibitions on all insignia, without further justification, likely violate the NLRA



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# Is Profanity-Laced Criticism of Employers Legally Protected? Recall the staunchly protected right to protest working conditions. 3 prior standards. Employee must now prove protest was "motivating factor." Employer may still win with customary enforcement.

# Questions?

Mark McQueen (402)636-8308 mmcqueen@bairdholm.com

Clay D. Haag (402)636-8234 chaag@bairdholm.com

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