

# Understanding the NLRB's New Legal Standard: Implications for Employee Handbooks

## Services

### Employment & Labor Law

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The landscape of labor law in the United States is ever-evolving, as evidenced by the recent ruling in the Stericycle, Inc. case before the National Labor Relations Board ([NLRB](#)). This decision marks a significant shift in how the legality of language in employee handbooks is determined, particularly in relation to the protection of employees' rights under the National Labor Relations Act (NLRA).

## I. The Shift from Boeing to Stericycle

The NLRB's Stericycle decision represents a departure from the precedent set by the Boeing case and its successors. Under the Boeing standard, employers were afforded considerable latitude in formulating work rules that, albeit inadvertently, might have stifled employees' NLRA-protected rights. Recognizing the inadequacy of this standard in safeguarding employee freedoms, the Board has reverted to a modified version of the Lutheran Heritage standard.

## II. The New Standard Explained

Under this revised framework, the onus is on the General Counsel to demonstrate that a given rule could, reasonably, be interpreted by employees as inhibiting their rights to engage in protected concerted activities. This evaluation hinges on whether a rule possesses a "coercive meaning" to an average employee — considering their economic dependence and potential interest in partaking in such activities.

Notably, even if a rule can also be construed in a non-coercive manner, the presence of a coercive interpretation renders it presumptively unlawful. Employers are given the opportunity to counter this presumption by showcasing the rule's essential business justification and the absence of a less intrusive alternative.

## III. Implications for Employers

The reverberations of the Stericycle decision are far-reaching. Employers are now encouraged to conduct thorough reviews of their employee handbooks to ensure alignment with this new standard. Given the NLRB's more rigorous scrutiny of workplace policies, the likelihood of facing unfair labor practice claims has risen. This underscores the importance of precise language and clear intent in the drafting of employment policies to prevent misinterpretation.

## IV. How Cohen Cleary, P.C. Can Help

Based on these developments, if you are an employee, you should be aware of this new standard and your legal rights. If you are an employer, ensuring that your employee handbook

complies with the latest legal standards has never been more crucial.

At Cohen Cleary, P.C., we specialize in navigating the complexities of labor and [employment law](#) to protect the rights of employees, to safeguard employers, and ensure that employee handbooks do not violate employees' rights. Whether you're an employee with an employment dispute, or whether you are an employer drafting a new handbook or wanting a review and possible revision to an existing one, our expert team is ready to provide the guidance and support you need.

We welcome employees or employers who are impacted by these issues to please [contact](#) Cohen Cleary, P.C. at [508-880-6677](tel:508-880-6677) to discuss your situation and how we can help.