

**FOR MANDATORY SUBMISSION TO NLRB GENERAL COUNSEL, PER MEMO GC-21-04**

**Overview**

*Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

Employees have a Section 7 right to discuss wages, hours, and other terms and conditions of employment with fellow employees, as well as with nonemployees, such as union representatives. Thus, an employer's confidentiality policy that either specifically prohibits employee discussions of terms and conditions of employment— such as wages, hours, or workplace complaints—or that employees would reasonably understand to prohibit such discussions, violates the Act. Similarly, a confidentiality rule that broadly encompasses "employee" or "personnel" information, without further clarification, will reasonably be construed by employees to restrict Section 7-protected communications. *See Flamingo-Hilton Laughlin, 330 NLRB 287, 288 n.3, 291-92 (1999).*

*Mandatory Submission to Advice, NLRB Memorandum GC 21-04 (Aug 12, 2021)*

“Over the past several years, the Board has made numerous adjustments to the law, including a wide array of doctrinal shifts. These shifts include overruling many legal precedents which struck an appropriate balance between the rights of workers and the obligations of unions and employers. At the same time, there are many other issues that also should be carefully considered to determine whether current law ensures that employees have the right to exercise their fundamental Section 7 rights both fully and freely. Submissions of these topics to Advice will allow the Regional Advice Branch to reexamine these areas and counsel the General Counsel’s office on whether change is necessary to fulfill the Act’s mission.

Employer handbook rules

- Cases involving the applicability of *The Boeing Co., 365 NLRB No. 154 (2017)*, (imposing a new framework for determining the legality of workplace/employee handbook rules). This includes, but is not limited to, Boeing’s applicability to confidentiality rules, non-disparagement rules, social media rules, media communication rules, civility rules, respectful and professional manner rules, offensive language rules and no camera rules. This further includes applicability of *L.A. Specialty Produce Co., 368 NLRB No. 93 (2019)* (changing General Counsel’s initial burden in rules cases to not only establish that a reasonable employee would interpret a facially neutral rule as potentially interfering with the exercise of Section 7 rights, but that work rules should be judged from the perspective of the objectively reasonable employee who is aware of his legal rights and also interprets work rules as they apply to the “everydayness” of his job).
- Cases involving the applicability of *AT&T Mobility, 370 NLRB No. 121 (2021)* (overruling prong three of *Lutheran Heritage Village-Livonia, 343 NLRB 646 (2004)*, and finding that an otherwise lawful work rule applied to restrict Section 7 activity remains lawful and that rescission of such rule in those circumstances is inappropriate).”

**Apple Handbook Policies Suspected to Violate NLRA § 7 Rights**

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**Policy: Public Speaking and Press Inquiries**<sup>1 2</sup>

“All public speaking engagements that relate to Apple’s business<sup>3</sup> or products must be pre-approved by your manager and Corporate Communications. All inquiries<sup>4</sup> from the press or the financial analyst community must be referred to Corporate Communications or Investor Relations.”

“A member of the press would like to speak with me about Apple’s unannounced product or services<sup>5</sup> is that Ok? You must get pre-approval from Corporate Communications before speaking with the press about these topics.”

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**Policy: Apple Confidential Information (Business Conduct & Global Compliance)**<sup>6</sup>

URL: <https://businessconduct.apple.com/policies/secretcy/confidential-apple-information/>

“Even within Apple, confidential information should only be shared on a need-to-know basis.”

“Apple Confidential information is anything not explicitly, publicly, or purposefully disclosed by Apple. Examples of Apple Confidential information include unannounced products (including their release

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<sup>1</sup> We found the following rules were unlawfully overbroad because employees reasonably would read them to ban protected communications with the media. Employees are not "authorized to speak to any representatives of the print and/or electronic media about company matters" unless designated to do so by HR, and must refer all media inquiries to the company media hotline. “ We determined that the above rule was unlawful because employees would reasonably construe the phrase "company matters" to encompass employment concerns and labor relations, and there was no limiting language or other context in the rule to clarify that the rule applied only to those speaking as official company representatives. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>2</sup> Unlawful: "[A]ssociates are not authorized to answer questions from the news media. . . . When approached for information, you should refer the person to [the Employer's] Media Relations Department." "[A]ll inquiries from the media must be referred to the Director of Operations in the corporate office, no exceptions." These two rules contain blanket restrictions on employees' responses to media inquiries. We therefore concluded that employees would reasonably understand that they apply to all media contacts, not only inquiries seeking the employers' official positions. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>3</sup> Note: Overbroad

<sup>4</sup> Note: Overbroad

<sup>5</sup> Note: Overbroad

<sup>6</sup> "[I]f something is not public information, you must not share it." We determined that the following confidentiality rules were facially unlawful, even though they did not explicitly reference terms and conditions of employment or employee information, because the rules contained broad restrictions and did not clarify, in express language or contextually, that they did not restrict Section 7 communications: *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

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dates, pricing, and specifications), unannounced sales promotions, certain AppleWeb announcements,<sup>7</sup> organizational charts,<sup>8</sup> financial forecasts, and customer information.<sup>9</sup>”

“Never disclose confidential, operational,<sup>10</sup> financial, trade- secret, or other business information<sup>11</sup> without verifying with your manager whether such disclosure is appropriate.”

“We are very selective when disclosing this type of information to vendors, suppliers, or other third parties,<sup>12</sup> and only do so once a non-disclosure agreement is in place.

Footer: “© 2021 Apple Inc. For internal use only.”<sup>13</sup>

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**Policy: Misconduct and Discipline**<sup>14</sup>

URL: <https://people.apple.com/US/en/subtopic/235>

“Employees who don’t exhibit appropriate<sup>15</sup> workplace behavior, or who violate company policies, guidelines, or ethics,<sup>16</sup> may be subject to discipline up to and including immediate termination of employment.”

“Conduct warranting immediate termination:

- Using Apple time, materials, facilities, equipment, or electronic resources for purposes unrelated to Apple business<sup>17</sup> without your manager’s express permission

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<sup>7</sup> Note: These may include pay, hours, & work conditions.

<sup>8</sup> *Costco Wholesale Corporation, 358 NLRB No 106 (2012)*, Vague / overbroad

<sup>9</sup> “We found the following rules to be unlawful because they restrict disclosure of employee information and therefore are unlawfully overbroad: Do not discuss "customer or employee information" outside of work, including phone numbers [and] addresses." *Report of the General Counsel Concerning Employer Rules, NRLB Memorandum GC 15-04 (2015)*

<sup>10</sup> Note: Overbroad

<sup>11</sup> Note: Overbroad

<sup>12</sup> Note: Overbroad

<sup>13</sup> Unlawful because it prohibited disclosure of the Wendy’s handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy’s International LLC (2014)*

<sup>14</sup> Unlawful: "No employee shall use any recording device including but not limited to, audio, video, or digital for the purpose of recording any [Employer] employee or [Employer] operation.. ."We found this rule unlawful because employees would reasonably construe it to preclude, among other things, documentation of unfair labor practices, which is an essential part of the recognized right under Section 7 to utilize the Board's processes. *Report of the General Counsel Concerning Employer Rules, NRLB Memorandum GC 15-04 (2015)*

<sup>15</sup> Note: Overbroad

<sup>16</sup> Note: Overbroad

<sup>17</sup> Note: Overbroad

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- Engaging in activities or behaviors that violate Apple policies<sup>18</sup>, including but not limited to Apple’s Business Conduct Policy, Harassment, and Equal Employment Opportunity.
  - Insubordination
  - Video or audio recording others without their prior consent. Apple may use recording or surveillance equipment for safety or security reasons.
  - Photography at any Apple facility or home office or during meetings at any location where Apple confidential information<sup>19</sup> could be compromised”<sup>20</sup>
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**Policy: Conflict of Interest & Outside Activities Policy**<sup>21</sup>

URL: <https://businessconduct.apple.com/policies/conflicts/conflicts-of-interest/>

“A conflict of interest is any activity that may damage Apple’s reputation or financial interests, or gives the appearance of impropriety or divided loyalty. Avoid any situation that creates a real or perceived conflict of interest.”

“Apple considers an outside activity to be a conflict of interest if it:

- Would require you to disclose or use confidential Apple information.”<sup>22</sup>

“Any employee, full or part-time, who is participating in an outside activity, must comply with the following rules. Do not:

- Participate in an activity that could have an adverse effect on your ability to perform your duties at Apple.<sup>23</sup>
- Use confidential Apple information.”<sup>24</sup>

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<sup>18</sup> Note: Overbroad

<sup>19</sup> Note: Overbroad

<sup>20</sup> Employees also have a Section 7 right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such pictures and recordings. See Hawaii Tribune-Herald, 356 NLRB No. 63, slip op. at 1 (Feb. 14, 2011), enforced sub nom. Stephens Media, LLC v. NLRB, 677 F.3d 1241 (D.C. Cir. 2012); White Oak Manor, 353 NLRB 795, 795 (2009), incorporated by reference, 355 NLRB 1280 (2010), enforced mem., 452 F. App'x 374 (4th Cir. 2011). Thus, rules placing a total ban on such photography or recordings, or banning the use or possession of personal cameras or recording devices, are unlawfully overbroad where they would reasonably be read to prohibit the taking of pictures or recordings on non-work time. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>21</sup> We determined that the following rules were unlawfully overbroad because they reasonably would be read to require employees to refrain from criticizing the employer in public. "Refrain from any action that would harm persons or property or cause damage to the Company's business or reputation."

Do not make "[s]tatements "that damage the company or the company's reputation or that disrupt or damage the company's business relationships." *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>22</sup> Note: Overbroad

<sup>23</sup> Note: Overbroad

<sup>24</sup> Note: Overbroad

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**Policy: Non-Disclosure/Confidentiality Agreements**

URL: <https://businessconduct.apple.com/policies/secretcy/non-disclosure-and-confidentiality/>

“Never share confidential information about Apple’s products or services<sup>26</sup> without your manager’s approval. When there is a business need to share confidential information with a supplier, vendor, or other third party<sup>27</sup>, never volunteer more than what is necessary to address the business at hand. Any confidential information shared outside Apple<sup>28</sup> should be covered by a non-disclosure/confidentiality agreement (NDA).”

Footer: “© 2021 Apple Inc. For internal use only.”<sup>29</sup>

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**Policy: Reporting a Concern**

*2020 Business Conduct Policy handbook*

“Your information will be shared only with those who have a need to know to help answer your questions or investigate concerns, ensure the prompt enforcement of this Policy, and, if appropriate, determine disciplinary action. If your information involves accounting, finance, or auditing, the law may require that necessary information be shared with the Audit and Finance Committee of the Board of Directors. Apple’s Business Conduct Policy is administered by the Business Conduct organization, under the oversight of Apple’s Chief Compliance Officer, who provides regular updates to the Audit and Finance Committee of the Board of Directors. The Business Conduct team is available to support all employees and answer questions on business conduct issues, policies, regulations, and compliance with legal requirements.”

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<sup>25</sup> Unlawful because it prohibited disclosure of the Wendy’s handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy’s International LLC* (2014)

<sup>26</sup> Note: Overbroad

<sup>27</sup> Note: Overbroad

<sup>28</sup> Note: Overbroad

<sup>29</sup> Unlawful because it prohibited disclosure of the Wendy’s handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy’s International LLC* (2014)

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*Web*

<https://people.apple.com/US/en/page/265>

“All reports of concerns are treated confidentially.”<sup>30 31</sup>

“If you have a concern to report, select the method below that you’re most comfortable with.”<sup>32</sup>

- Manager. Talk with your manager, anyone in your team’s management chain, or any manager at Apple.
- People Support. Reach out to People Support by calling or submitting an online form. See how to contact People Support
- People Business Partner. Reach out to your People Business Partner. If you’re not sure who yours is, People Support can tell you.
- Business Conduct. Call the Business Conduct Helpline at +1-408-974-1200, send an email to [businessconduct@apple.com](mailto:businessconduct@apple.com), or submit an online form. The Business Conduct Helpline accepts anonymous reports.
- EthicsPoint. Use Apple’s third-party vendor, EthicsPoint, to submit a confidential or anonymous report online or by phone. This service is available in your local language 24 hours a day.”

“Based on the violation and investigation findings, disciplinary action may be taken against the person who violated Apple’s policy.”<sup>33</sup> Depending on the circumstances, this action may include coaching, a misconduct warning, a demotion, or termination.”

“Note: Although the discipline might not be shared with you, it doesn’t mean that action wasn’t taken. For legal reasons, and sometimes to comply with local law, it may not be possible to disclose this information to you. We’re committed to taking action to address any issue in the workplace.”

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**Policy: Workplace Searches and Privacy** <sup>34</sup>

<https://people.apple.com/US/en/subtopic/845>

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<sup>30</sup> Investigation confidentiality rules would be lawful only if the employer could show a particularized legitimate, substantial business justification that outweighed employee Section 7 rights. *Banner Estrella Medical Center*, 362 NLRB 1108. Investigative confidentiality rules are lawful Category 1 rules under *The Boeing Company*, 365 NLRB No. 154 (2017), where, by their terms, the rules apply for the duration of any investigation. *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144 (2019).

<sup>31</sup> Confidential implies you cannot report it to the government, talk to a lawyer, or share it with employees. *Costco Wholesale Corporation*, 358 NLRB No 106 (2012). A rule prohibiting employees from discussing matters under investigation is overbroad & unlawful. *Hyundai* (2015)

<sup>32</sup> The implication that employees must report wage and hour complaints only internally is unlawful, *T-Mobile NLRB* (2015).

<sup>33</sup> Note: Overbroad

<sup>34</sup> Photographing employees engaged in protected concerted activities constitutes unlawful surveillance because it has a tendency to intimidate employees and interfere with exercise of Section 7 rights. Photographing in the mere belief that something "might" happen is not a sufficient justification. *F.W. Woolworth Co.*, 310 NLRB 1197 (1993); see also, *National Steel and Shipbuilding Co.*, 324 NLRB 499 (1997) (peaceful union rallies); *Labor Ready, Inc.*, 327 NLRB 1055 (1999), (employer videotapes of workers employed by temporary service in waiting room waiting for assignments unlawful).

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“In order to protect Apple confidential and sensitive<sup>35</sup> information and maintain the security and integrity of our networks and equipment, any use of Apple property, as well as use of your personal devices for Apple business or for accessing Apple networks, is subject to this policy.”

“Workplace searches <sup>36</sup>

Only in cases where allowed under local law,<sup>37</sup> Apple may:

- Access, search, monitor, archive, and delete Apple data stored on all of its property, as well as non-Apple property, if used for Apple business or if used for accessing Apple data, servers, or networks. This includes all data and messages sent, accessed, viewed, or stored (including those from iCloud, Messages, or other personal accounts) using Apple equipment, networks, or systems.
- Conduct physical, video, or electronic surveillance, search your workspace such as file cabinets, desks, and offices (even if locked), review phone records, or search any non-Apple property (such as backpacks, purses) on company premises.”

“This means that you have no expectation of privacy when using your or someone else’s personal devices for Apple business, when using Apple systems or networks, or when on Apple premises.”

“The search or removal of Apple-related content on a device will be determined on a case-by-case basis when there is a business need and subject to local approval processes. Refusing to permit a search or removal of Apple-related content may result in disciplinary action up to and including termination of employment.”<sup>38</sup>

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## **Policy: Protecting Apple** <sup>39</sup>

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“Watch what you say. Being aware of where you are, who is around you, and what they might see or overhear is an important way we all protect Apple’s secrets.”<sup>40</sup>

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<sup>35</sup> Note: Overbroad

<sup>36</sup> *Boeing Corporation Advice Memo (2013)*, Boeing must cease and desist from creating the impression that its employees’ union and/or protected concerted activities are under surveillance. *Register Guard*, 344 NLRB 1142, 1144 (2005) (test is whether the employee would reasonably assume from the statement that their union activities had been placed under surveillance.” *Flexsteel Industries*, 311 NLRB 257, 257 (1993).

<sup>37</sup> Note: Overbroad

<sup>38</sup> Note: Overbroad. Do organizing and union materials count as Apple-related?

<sup>39</sup> We determined that the following confidentiality rules were facially unlawful, even though they did not explicitly reference terms and conditions of employment or employee information, because the rules contained broad restrictions and did not clarify, in express language or contextually, that they did not restrict Section 7 communications: “Discuss work matters only with other [Employer] employees who have a specific business reason to know or have access to such information.” *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>40</sup> Note: Overbroad

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“Set an example. Model behavior that protects our assets and information at all times.”<sup>41</sup>

**“Apple Confidential Information**

One of our greatest assets is information about our products and services, including future product offerings. Never disclose confidential,<sup>42</sup> operational,<sup>43</sup> financial, trade-secret, or other business information<sup>44</sup> without verifying with your manager whether such disclosure is appropriate. We are very selective when disclosing this type of information to vendors, suppliers, or other third parties<sup>45</sup>, and only do so once a non-disclosure agreement is in place. Even within Apple, confidential information should only be shared on a need-to-know basis<sup>46</sup>. The Intellectual Property Agreement that you signed when you joined Apple outlines your duty to protect our information. “

**“Non-Disclosure/Confidentiality Agreements**

Never share confidential information<sup>47</sup> about Apple’s products or services without your manager’s approval. When there is a business need to share confidential information with a supplier, vendor, or other third party,<sup>48</sup> never volunteer more than what is necessary to address the business at hand. Any confidential information shared outside Apple<sup>49</sup> should be covered by a non-disclosure/confidentiality agreement (NDA). Contact Legal in your region to obtain an NDA. In the United States, you can find NDA information and support on the Legal website.”

**“Customer and Third-Party Information**

Customers, partners, suppliers, and other third parties may disclose confidential information<sup>50</sup> to Apple during the course of business. We are all responsible for protecting and maintaining the confidentiality of any information entrusted to us by our partners. Compromising that trust may damage relations with our partners and can also result in legal liability. For more information, see the Apple Customer Privacy Policy.”

**“Records and Information Management”<sup>51</sup>**

Apple owns all records and information in any form,<sup>52</sup> such as electronic or paper, that is created or received in the course of doing Apple’s business.”

**“Side Deals or Side Letters**

Apple formally documents all terms and conditions of the agreements into which it enters. Contractual terms and conditions define Apple’s rights,<sup>53</sup> obligations,<sup>54</sup> liabilities, and accounting treatments. We do

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<sup>41</sup> Note: Overbroad

<sup>42</sup> Note: Overbroad

<sup>43</sup> Note: Overbroad

<sup>44</sup> Note: Overbroad

<sup>45</sup> Note: Overbroad

<sup>46</sup> Note: Overbroad

<sup>47</sup> Note: Overbroad

<sup>48</sup> Note: Overbroad

<sup>49</sup> Note: Overbroad

<sup>50</sup> Note: Overbroad

<sup>51</sup> A rule limiting disclosure of information from Hyundai’s electronic communication and information systems was found unlawful. *Hyundai, NLRB (2015)*.

<sup>52</sup> Note: Overbroad

<sup>53</sup> Note: Overbroad

<sup>54</sup> Note: Overbroad



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not accept business commitments outside of the formal contracting process managed by Legal. Side deals, side letters, or other informal documentation created by employees without Legal oversight are impermissible. You should not make any oral or written commitments that create a new agreement or modify an existing agreement without securing approval through the formal contracting process.”

“The Apple Identity and Trademarks

The Apple name, names of products (such as iPhone), names of services (such as AppleCare), taglines (such as ”Think Different”), and logos collectively create the Apple identity. Before publicly using any of these assets, review the Trademark List, Trademark and Copyright Guidelines, and Corporate Identity Guidelines for how to properly do so. You should also check with Legal before using the product names, service names, taglines, or logos of any third parties.”

“Public Speaking and Press Inquiries <sup>55</sup>

All public or outside speaking engagements that relate to Apple’s business<sup>56</sup> or products must be pre-approved by your manager and Corporate Communications. If your request is approved, you may not request or accept any form of personal compensation from the organization that requested your participation, but you may accept reimbursement for incurred expenses. All inquiries from the media, industry, or financial analyst community must be referred to Corporate Communications or Investor Relations.”

“Publishing Articles

If you want to contribute an article or other type of submission to a publication or blog on a topic that relates to Apple’s business<sup>57</sup> or products or could be seen as a conflict of interest,<sup>58</sup> you must first request approval from Corporate Communications. If your contribution is technical or academic and relates to Apple, complete the Academic and Industry- Related Activities Questionnaire to obtain review from Legal and Business Conduct. If your contribution is determined to be a conflict of interest, you will need to get senior vice president approval. For additional information, see the Social Media and Online Communications guidelines.”

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**Policy: Individual Accountability**

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“Conflicts of Interest and Outside Activities

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<sup>55</sup> Requirements that employees not communicate with the media are unlawful; *T-Mobile, NLRB (2015)*

<sup>56</sup> Note: Overbroad

<sup>57</sup> Note: Overbroad

<sup>58</sup> Note: Overbroad

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You may participate in outside activities, including secondary employment, businesses, inventions, and servicing on boards, only if they do not present a conflict of interest<sup>59</sup> and you adhere to the rules set out below.

Apple generally considers an outside activity to be a conflict of interest if it:

- Would require you to disclose or use confidential Apple information.<sup>60</sup>

“Work with your manager and Business Conduct to evaluate a potential conflict of interest. If an outside activity presents a conflict of interest, you must partner with a People Business Partner, and obtain written approval from your manager, Legal (if applicable), and the senior most person reporting to the CEO of both your and any relevant organizations. Contact Business Conduct to assist with Legal review.”

“Any employee, full or part-time, who is participating in an outside activity, must comply with the following rules.

Do not:

- Use any time at work or any Apple assets for your outside activity. This includes Apple’s workspace, phones, computers, Internet access, photocopiers, and any other Apple assets or services.<sup>61</sup>
- Use your position at Apple to solicit resources or any other benefit for your outside activity, obtain favored treatment, or pressure others to assist you.
- Participate in an activity that could have an adverse effect on your ability to perform your duties<sup>62</sup> at Apple.
- Use confidential Apple information.<sup>63</sup>

“Personal Political Activities”<sup>64</sup>

You are free to personally participate in political activities,<sup>65</sup> including running for and serving in public positions, and supporting candidates and causes, as long as you comply with the points below:

- Do not represent or give the impression that you are representing Apple during any political activities or in campaign materials.<sup>66</sup>
- Do not make public comments that could be misconstrued as being made on behalf of Apple, or give the impression that Apple is endorsing any particular legislation, position, or issue.<sup>67</sup>
- Do not use Apple work time, equipment, or resources for political or campaign activities.<sup>68</sup>
- If holding a public office, you may need to recuse yourself from any matters involving Apple.”

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<sup>59</sup> Note: Overbroad

<sup>60</sup> Note: Overbroad

<sup>61</sup> If unionization is a conflict of interest, does this implicate Purple Communications? [Cases involving applicability of Rio All-Suites Hotel and Casino, 368 NLRB No. 143 (2019) (overruling Purple Communications, 361 NLRB 1050 (2014) governing employees’ rights to use an employer’s email system for workplace communications). Regions should also submit cases involving employees’ use of other electronic platforms in the workplace, i.e. Discord, Slack, Groupme, or other employer communication systems. *Mandatory Submission to Advice, NLRB Memorandum GC 21-04 (Aug 12, 2021)*]

<sup>62</sup> Note: Overbroad

<sup>63</sup> Note: Overbroad

<sup>64</sup> Policies which prevented use of email for political or non-company purposes are unlawful; *T-Mobile, NLRB (2015)*

<sup>65</sup> Note: Overbroad. Does this include unionization and labor law/advocacy activities?

<sup>66</sup> Note: Overbroad. Does this include Apple unionization activities?

<sup>67</sup> Note: Overbroad. Couldn’t discuss Apple’s position on unionization?

<sup>68</sup> Note: Overbroad. Does this include Apple unionization activities?

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**Policy: Business Integrity**

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“Private Employee Information

You should never share a coworker or prospective employee’s personal information.<sup>69</sup> This includes information regarding their employment history,<sup>70</sup> personal contact information, compensation,<sup>71</sup> health information, or performance and disciplinary matters.<sup>72</sup> Any Legal or business need-to-know exceptions should be approved by your manager and Legal.”

“As an Apple employee, you should understand that subject to local laws and regulations and in accordance with Apple’s review process, we may do one of the following when you access Apple’s network or systems, or use any device, regardless of ownership, to conduct Apple business:

- Access, search, monitor, and archive all data and messages sent, accessed, viewed, or stored (including those from iCloud, Messages, or other personal accounts).
- Conduct physical, video, or electronic surveillance, search your workspace (e.g. file cabinets, desk drawers, and offices, even if locked), review phone records, or search any non-Apple property (e.g. backpacks, handbags) while on company premises.
- Disclose to law enforcement, without prior notice, any information discovered during a search that may indicate unlawful behavior.”

“While limited personal use of Apple equipment and systems is allowed, Apple may monitor equipment and systems. You should not have any expectation about the privacy of content or personal information on Apple systems or networks, including VPN.<sup>73</sup> To learn more, read our Information Security Policies and guidance on Personal Information Privacy on the People site, which explain Apple’s rights and your rights when conducting Apple business or using Apple-provided equipment. For more information, contact the Privacy team.”

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<sup>69</sup> *Costco Wholesale Corporation*, 358 NLRB No 106 (2012), Vague / overbroad

<sup>70</sup> *Costco Wholesale Corporation*, 358 NLRB No 106 (2012), Vague / overbroad

<sup>71</sup> *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), (respondent violated 8(a)(1) by promulgating and maintaining rule prohibiting employees from discussing their salaries and also by disciplining an employee for violating that rule); *Koronis Parts*, 324 NLRB 675 (1997). *Leather Center Inc.*, 312 NLRB 521, 527 (1993) (rule or policy barring employees from any discussion of wages, unlawful); *Lockheed Martin Astronautics*, 330 NLRB 422, 423 (2000)

<sup>72</sup> Note: Overbroad. Does this include Apple unionization activities?

<sup>73</sup> *Boeing Corporation Advice Memo (2013)*, Boeing must cease and desist from creating the impression that its employees’ union and/or protected concerted activities are under surveillance. *Register Guard*, 344 NLRB 1142, 1144 (2005) (test is whether the employee would reasonably assume from the statement that their union activities had been placed under surveillance.” *Flexsteel Industries*, 311 NLRB 257, 257 (1993).

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**Policy: Your Responsibilities and Obligation to Take Action**

*2020 Business Conduct Policy handbook*

“Everything we do is a reflection of Apple. We expect you to:

- Follow the Policy. Comply with the letter and spirit of Apple’s Business Conduct Policy and all applicable legal requirements.
- Speak up. If you see or hear of any violation of Apple’s Business Conduct Policy, other Apple policies, or legal or regulatory requirements, you must notify either your manager, People Team, Legal, or Business Conduct.<sup>74</sup>
- Use good judgment and ask questions. Apply Apple’s principles of business conduct, and review our policies and legal requirements. When in doubt about how to proceed, discuss it with your manager, your People Business Partner, Legal, or Business Conduct.<sup>75</sup> Any failure to comply with Apple’s Business Conduct Policy—or failure to report a violation<sup>76</sup>—may result in disciplinary action, up to and including termination of employment.

You are also required to fully cooperate in any Apple investigation, and keep any information shared with you confidential<sup>77</sup> to safeguard the integrity of the investigation. <sup>78</sup>

*Website*

URL: <https://businessconduct.apple.com/policies/speaking-up/take-action/>

“If you see or hear of any violation of Apple’s Business Conduct Policy, other Apple policies, or legal or regulatory requirements, you must notify either your manager, People Team, Legal, or Business Conduct.”<sup>79</sup>

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<sup>74</sup> The implication that employees must report wage and hour complaints only internally is unlawful, *T-Mobile NLRB (2015)*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Confidential implies you cannot report it to the government, talk to a lawyer, or share it with employees. *Costco Wholesale Corporation, 358 NLRB No 106 (2012)*. A rule prohibiting employees from discussing matters under investigation is overbroad & unlawful. *Hyundai (2015)*

<sup>78</sup> Investigation confidentiality rules would be lawful only if the employer could show a particularized legitimate, substantial business justification that outweighed employee Section 7 rights. *Banner Estrella Medical Center, 362 NLRB 1108*. Investigative confidentiality rules are lawful Category 1 rules under *The Boeing Company, 365 NLRB No. 154 (2017)*, where, by their terms, the rules apply for the duration of any investigation. *Apogee Retail LLC d/b/a Unique Thrift Store, 368 NLRB No. 144 (2019)*.

<sup>79</sup> The implication that employees must report wage and hour complaints only internally is unlawful, *T-Mobile NLRB (2015)*

<sup>80</sup> Unlawful because it prohibited disclosure of the Wendy’s handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy’s International LLC (2014)*

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**Policy: Social Media and Online Communications** <sup>81 82</sup>

“It’s your decision whether or not to engage in these or other online communications. But keep in mind that Apple’s policies and guidelines apply to any activities that affect your performance, the performance of other Apple employees, or Apple’s business interests. This is true even if you blog, tweet, write, post, comment, share visual or other media, or otherwise communicate online outside of work — even if you do not identify yourself as an Apple employee. So before you click or tap “send,” keep these guidelines in mind:

Protect Apple’s confidential information.<sup>83</sup> As we conduct business around the world, our competitive strategy requires us to keep Apple’s intellectual property and proprietary information confidential.<sup>84</sup> This includes non-public information<sup>85</sup> such as the timing, pricing, and design of Apple products; Apple’s overall business performance; and the layout of our stores (including back-of-house areas, which contain competitive business operations information, customer data, sales targets, and other proprietary information<sup>86</sup>). All Apple employees have an obligation to protect this information. Doing so respects the significant amount of time and energy Apple puts into introducing our customers to new products and new retail stores. For more information on confidentiality, see the Intellectual Property Agreement you signed when you were hired. You can also learn more about protecting Apple’s assets and confidential information in Apple’s Business Conduct Policy.”

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<sup>81</sup> Unlawful: Confidential Information is: "All information in which its [sic] loss, undue use or unauthorized disclosure could adversely affect the [Employer's] interests, image and reputation or compromise personal and private information of its members." Employees not only have a Section 7 right to protest their wages and working conditions, but also have a right to share information in support of those complaints. This rule would reasonably lead employees to believe that they cannot disclose that kind of information because it might adversely affect the employer's interest, image, or reputation. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>82</sup> We determined that the following rules were unlawfully overbroad because they reasonably would be read to require employees to refrain from criticizing the employer in public. "Refrain from any action that would harm persons or property or cause damage to the Company's business or reputation." *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>83</sup> Note: Overbroad

<sup>84</sup> Note: Overbroad

<sup>85</sup> Note: Overbroad

<sup>86</sup> *Lafayette and Lutheran*: Rule prohibiting employees from revealing personal information regarding co-workers was unduly broad and could reasonably be interpreted as restraining Section 7 activity. A rule that precludes employees from discussing terms and conditions of employment, or sharing information about themselves or their fellow employees with each other or with non-employees violates Section 8(a)(1). Rule stating that no post may violate privacy or confidential rights of any person or entity provided no definition or guidance as to what the Employer considered to be private and confidential. Rule could reasonably be interpreted as prohibiting protected employee discussions of wages and other terms and conditions of employment and is therefore overbroad and unlawful, particularly, where the Employer applied it as such.

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“Be polite. We want you to be yourself, but you should also be respectful in posts, tweets, and other online communications.<sup>87</sup> Do not use vulgar, intimidating, discriminating, or harassing language.<sup>88 89</sup> Apple is a global organization whose employees and customers come from different backgrounds and may have different values and points of view. Keep Apple’s Harassment policies in mind when considering what you post online. For more information, refer to Apple’s Business Conduct Policy.”

“We think Apple is a great place to work and we want to keep it that way,<sup>90</sup> so if you have any questions or concerns, please talk with your manager or the People team, or call People Support or Business Conduct Helpline.”

“Nothing in these guidelines should be interpreted as restricting your right to speak freely about your wages, hours, or working conditions.”

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**Confidentiality and Intellectual Property Agreement**<sup>91</sup>  
US IPA v14.2

“Proprietary Information: means all information not generally known outside Apple and/or kept confidential by Apple,<sup>92</sup> including for example but not limited to:

b) sales, profits, organization, customer lists, pricing, sources of material, supply, costs, manufacturing, financials, forecast, marketing research, or any other information relating to the business operations or affairs of Apple or persons or companies dealing with Apple<sup>93</sup>

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<sup>87</sup> We found the following rules unlawfully overbroad since employees reasonably would construe them to ban protected criticism or protests regarding their supervisors, management, or the employer in general. “[Me respectful to the company, other employees, customers, partners, and competitors. No “[d]efamatory, libelous, slanderous or discriminatory comments about [the Company], its customers and/or competitors, its employees or management. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>88</sup> Employees also have the Section 7 right to criticize or protest their employer’s labor policies or treatment of employees. Thus, rules that can reasonably be read to prohibit protected concerted criticism of the employer will be found unlawfully overbroad. For instance, a rule that prohibits employees from engaging in. “disrespectful,” “negative,” “inappropriate,” or “rude” conduct towards the employer or management, absent sufficient clarification or context, will usually be found unlawful. *See Casino San Pablo*, 361 NLRB No. 148, slip op. at 3 (Dec. 16, 2014). *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>89</sup> Unlawful: Do not make “insulting, embarrassing, hurtful or abusive comments about other company employees online,” and “avoid the use of offensive, derogatory, or prejudicial comments.” Because debate about unionization and other protected concerted activity is often contentious and controversial, employees would reasonably read a rule that bans “offensive,” “derogatory,” “insulting,” or “embarrassing” comments as limiting their ability to honestly discuss such subjects. These terms also would reasonably be construed to limit protected criticism of supervisors and managers, since they are also “company employees.” *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>90</sup> *Valerie Manor, Inc.*, 351 NLRB 1306 (2007) (threat of unspecified reprisals).

<sup>91</sup> We determined that the following confidentiality rules were facially unlawful, even though they did not explicitly reference terms and conditions of employment or employee information, because the rules contained broad restrictions and did not clarify, in express language or contextually, that they did not restrict Section 7 communications: “Discuss work matters only with other [Employer] employees who have a specific business reason to know or have access to such information.” *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>92</sup> Note: Overbroad

<sup>93</sup> Note: Overbroad

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c) the employment and personnel information of Apple, such as compensation,<sup>94</sup> training,<sup>95</sup> recruiting, and other human resource information.<sup>96</sup>

Footnote 1: Nothing in the Agreement should be interpreted as restricting your rights to speak freely about wages, hours, or working conditions as legally permitted.

“Treatment of Proprietary Information. You understand...

You understand and agree that your employment by Apple prohibits you, during or after employment, from using or disclosing, or permitting any other person or entity to use or disclose, any Proprietary Information<sup>97</sup> without the written consent of Apple, except as necessary to perform your duties as an employee of Apple. You understand and agree to strictly comply with all of Apple’s rules and policies regarding Proprietary Information and use best efforts to safe guard such Proprietary Information and protect it against disclosure, misuse, loss, or theft. Upon termination of employment with Apple, you will promptly deliver to Apple all documents and materials of any kind pertaining to your work at Apple,<sup>98</sup> and you agree that you will not take with you any documents, materials, or copies thereof, whether on paper or any other medium, containing any Proprietary Information.<sup>99</sup>

“Information of Others

You agree you have not brought, and during your employment with Apple will not bring, any confidential, proprietary, or secret information or intellectual property of your former employer(s) or any other person(s) or entity(ies) onto Apple property. You further agree you have not improperly used or disclosed (or induced the same) and during your employment with Apple will not improperly use or disclose (or induce the same) any confidential, proprietary, or secret information or intellectual property of your former employ(s) or any other person(s) or entity(ties).”<sup>100</sup> <sup>101</sup>

“No Conflicting Obligations

- No conflicting Outside Interests: You agree that during your employment by Apple, you will not plan or engage in any other employment, occupations, consulting, or other business activities or commitments competitive with or directly related to Apple’s business or products,<sup>102</sup> or to its

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<sup>94</sup> *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), (respondent violated 8(a)(1) by promulgating and maintaining rule prohibiting employees from discussing their salaries and also by disciplining an employee for violating that rule); *Koronis Parts*, 324 NLRB 675 (1997). *Leather Center Inc.*, 312 NLRB 521, 527 (1993) (rule or policy barring employees from any discussion of wages, unlawful); *Lockheed Martin Astronautics*, 330 NLRB 422, 423 (2000)

<sup>95</sup> *Costco Wholesale Corporation*, 358 NLRB No 106 (2012), Vague / overbroad

<sup>96</sup> *Costco Wholesale Corporation*, 358 NLRB No 106 (2012), Vague / overbroad

<sup>97</sup> Note: Overbroad

<sup>98</sup> Note: Overbroad

<sup>99</sup> Note: Overbroad

<sup>100</sup> “While an employer may clearly ban disclosure of its own confidential information, a broad reference to “another’s” information, without further clarification, as in the above rule, would reasonably be interpreted to include other *employees’* wages and other terms and conditions of employment. ” *Report of the General Counsel Concerning Employer Rules, NRLB Memorandum GC 15-04 (2015)*

<sup>101</sup> Note: Overbroad

<sup>102</sup> Note: Overbroad

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actual or demonstrably anticipated research or development., nor will you engage in any other activities that conflict with any employment obligations by Apple.<sup>103 104</sup>

- No Conflicting Agreements: You represent to Apple that you have no others commitments that would hinder or prevent the full performance of your duties as an Apple employee or your obligations under this Agreement,<sup>105</sup> and you agree not to enter into any such conflicting agreement during the tenure of employment by Apple.
- Disclosure of Agreement: You hereby authorize Apple to notify others, including customers of Apple and any future employers you may have, of the terms of this Agreement and your responsibilities under this Agreement.
- No Solicitation: To the fullest extent permitted by applicable law, during your employment and for a period of one (1) year following your termination (whether voluntary or involuntary) you will not directly or indirectly, on your own behalf or on behalf of another persons or entity, solicit, recruit, or take any action intended to induce Apple employees or contractors to terminate their relationship with Apple.<sup>106</sup>

**“Non-Compliance**

You acknowledge and agree that the limitations set forth herein are reasonable with respect to scope and duration, and are properly required for the protection of the legitimate interest of Apple. If you breach any part of this Agreement, Apple is entitled to take any action to the extent permissible<sup>107</sup> under applicable laws and this Agreement including but not limited to terminating employment, initiating a legal proceeding, filing a complaint to relevant administrative departments, and assisting the relevant judicial authorities to pursue your liabilities in case that your breach of this Agreement has violated any criminal laws.

You acknowledge and agree that any breach of this Agreement could give rise to irreparable harm to Apple for which money damages may not be an adequate remedy. Because such harm and injury may not be compensable by damages, you agree that apple will have the right to enforce this Agreement by injunction, specific performance, or other equitable relief without posting a bond or security and without prejudice of any other rights and remedies available. Accordingly, Apple may apply to any court of competent jurisdiction for any interim or conservatory measures, including temporary or permanent injunctive relief or to compel arbitration.”

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**2015 Offer letter for Ashley Henderson (Gjovik)**

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<sup>103</sup> Unlawful: Confidential Information is: "All information in which its [sic] loss, undue use or unauthorized disclosure could adversely affect the [Employer's] interests, image and reputation or compromise personal and private information of its members." Employees not only have a Section 7 right to protest their wages and working conditions, but also have a right to share information in support of those complaints. This rule would reasonably lead employees to believe that they cannot disclose that kind of information because it might adversely affect the employer's interest, image, or reputation. *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>104</sup> Note: Overbroad

<sup>105</sup> Note: Overbroad

<sup>106</sup> Note: Overbroad

<sup>107</sup> Note: Overbroad



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“Apple Confidential”<sup>108</sup>

“By accepting this offer, you acknowledge that you have received and read Apple’s Business Conduct Policy and that you agree to comply with its terms.”

“By signing this letter you agree that these are the only terms and conditions of your employment<sup>109</sup> and acknowledge that you have not relied upon any other promises or representations, except those made in this letter.”

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### **Confidentiality Obligation Upon Termination of Employment**

Dec 2020

“During your employment you had access to proprietary information<sup>110</sup> of Apple Inc and its subsidiaries (Apple). Examples of such proprietary information means all information not generally known outside Apple and/or kept confidential by Apple,<sup>111</sup> including for example and without limitation:

b) sales, profits, organization,<sup>112</sup> customer lists, pricing, sources of material, supply, costs, manufacturing, financials, forecast, budgets, market research, marketing or advertising plans, or any other information relating to the business operations or affairs of Apple or persons or companies dealing with Apple<sup>113</sup>

c) the employment and personnel information of Apple, such as compensation,<sup>114</sup> training, recruiting, and other human resource information.<sup>115</sup>

You may have created such information in the course of your everyday work. You may have additionally had access to proprietary information in the course of your work at Apple obtained from third parties including subsidiaries, affiliates, vendors, suppliers, customers, consultants, licensees, and dealers.<sup>116</sup> You are obligated not to disclose any above described proprietary information<sup>117</sup> to any

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<sup>108</sup> Unlawful because it prohibited disclosure of the Wendy's handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy's International LLC* (2014)

<sup>109</sup> How does this incorporate the Handbook?

<sup>110</sup> Note: Overbroad

<sup>111</sup> Note: Overbroad

<sup>112</sup> *Costco Wholesale Corporation, 358 NLRB No 106 (2012)*, Vague / overbroad

<sup>113</sup> Note: Overbroad

<sup>114</sup> *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), (respondent violated 8(a)(1) by promulgating and maintaining rule prohibiting employees from discussing their salaries and also by disciplining an employee for violating that rule); *Koronis Parts*, 324 NLRB 675 (1997). *Leather Center Inc.*, 312 NLRB 521, 527 (1993) (rule or policy barring employees from any discussion of wages, unlawful); *Lockheed Martin Astronautics*, 330 NLRB 422, 423 (2000)

<sup>115</sup> *Costco Wholesale Corporation, 358 NLRB No 106 (2012)*, Vague / overbroad

<sup>116</sup> Note: Overbroad

<sup>117</sup> Note: Overbroad

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other persons<sup>118</sup> or company (other than with Apple’s prior consent) or use it for your own benefit.<sup>119</sup> Furthermore, you are obligated to have returned to Apple all documents and materials of any kind pertaining to your work at Apple and containing proprietary information.”<sup>120</sup>

“Certainly Apple has no desire to prevent you from the lawful exercise of your professional skills.<sup>121</sup> However, any unauthorized disclosure or use of Apple proprietary information in conjunction with your new employment – or otherwise – would be a breach of your agreement with Apple, as well as a violation of the laws relating to the protection of such information. Your obligations continue until such time as the proprietary information is generally available to the public.”<sup>122 123</sup>

“If you have any questions regarding the Confidentiality and Intellectual Property Agreement, if you are concerned about the use or disclosure of proprietary information, or if you should find yourself in a position where you are uncertain about whether an idea or investigation should have been disclosed to apple, please promptly contact the Apple IP Transactions Department and we will be pleased to review the matter with you.”<sup>124</sup>

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**Policy: Checklist for Employees Leaving Apple**  
Rev. US-Dec 2020

“Apple Need to Know Confidential”<sup>125</sup>

“Confidentiality: As a reminder, you are expected to continue to abide by the provisions of the Intellectual Property Agreement after your employment with Apple ends. Examples include but are not limited to unreleased product information, new product schedules, budgets, marketing plans, organization charts,<sup>126</sup> customer lists, and vendor contacts”<sup>127</sup>

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<sup>118</sup> Note: Overbroad

<sup>119</sup> Note: Overbroad

<sup>120</sup> Note: Overbroad

<sup>121</sup> *Valerie Manor, Inc.*, 351 NLRB 1306 (2007) (threat of unspecified reprisals).

<sup>122</sup> We determined that the following confidentiality rules were facially unlawful, even though they did not explicitly reference terms and conditions of employment or employee information, because the rules contained broad restrictions and did not clarify, in express language or contextually, that they did not restrict Section 7 communications: “[I]f something is not public information, you must not share it.” *Report of the General Counsel Concerning Employer Rules, NLRB Memorandum GC 15-04 (2015)*

<sup>123</sup> Note: Overbroad

<sup>124</sup> Note: How about contact a lawyer?

<sup>125</sup> Unlawful because it prohibited disclosure of the Wendy's handbook, which contains employment policies, to third parties such as union representatives or the Board. Because employees have a Section 7 right to discuss their wages and other terms and conditions of employment with others, including co-workers, union representatives, and government agencies, such as the Board, a rule that precludes employees from sharing the employee handbook that contains many of their working conditions violates Section 8(a)(1). *NLRB v Wendy's International LLC* (2014)

<sup>126</sup> *Costco Wholesale Corporation*, 358 NLRB No 106 (2012), Vague / overbroad

<sup>127</sup> Note: Overbroad

**Policy: About Workplace Policies**

URL: <https://people.apple.com/US/en/subtopic/243>

“If you have knowledge of a possible violation of Apple’s Business Conduct Policy (PDF), any other Apple policy, or legal or regulatory requirements, you must notify your manager, your People Business Partner, People Support, or the Business Conduct Helpline.”<sup>128</sup>

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**Policy: No Retaliation**

URL: <https://businessconduct.apple.com/policies/speaking-up/no-retaliation/>

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**Policy: Reporting a Concern| Apple BC Intranet**

URL: <https://businessconduct.apple.com/policies/speaking-up/reporting-a-concern/>

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**Policy: Outside Employment and Inventions**

<https://businessconduct.apple.com/policies/conflicts/outside-employment/>

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<sup>128</sup> The implication that employees must report wage and hour complaints only internally is unlawful, *T-Mobile NLRB (2015)*

<sup>129</sup> Note: Overbroad

<sup>130</sup> Id.

<sup>131</sup> Id.

**Policy: Harassment and Discrimination | Apple BC Intranet**

URL: <https://businessconduct.apple.com/policies/workplace-behaviors/harassment-and-discrimination/>

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<sup>132</sup> Id.