

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).”

NATIONAL LABOR RELATIONS BOARD
FORM NLRB-501 – Ashley Gjovik – Attachment (Sept 21 2021 Memo)

Memo from Apple CEO

Date: Sept 21, 2021
From: Tim Cook, To: Apple_Employees\$@group.apple.com
Subject: Follow-up on global team meeting

Dear Team,

It was great to connect with you at the global employee meeting on Friday. There was much to celebrate, from our remarkable new product line-up to our values driven work around climate change, racial equity, and privacy. It was a good opportunity to reflect on our many accomplishments and to have a discussion about what's been on your mind.

I'm writing today because I've heard from so many of you were were incredibly frustrated to see the contents of the meeting leak to reporters. This comes after a product launch in which most of the details of our announcements were also leaked to the press.

I want you to know that I share your frustration. These opportunities to connect as a team are really important. But they only work if we can trust that the content will stay within Apple. I want to reassure you that we are doing everything in our power to identify those who leaked.¹ As you know, we do not tolerate disclosures of confidential information, whether it's product IP or the details of a confidential meeting.² We know that the leakers constitute a small number of people. We also know that people who leak confidential information do not belong here.^{3 4 5 6}

As we look forward, I want to thank you for all you've done to make our products a reality and all you will do to get them into customers' hands. Yesterday we released iOS 15, iPadOS 15, and watchOS 8, and Friday marks the moment when we share some of our incredible new products with the world. There's nothing better than that. We'll continue to measure our contributions in the lives we change, the connections we foster, and the work we do to leave the world a better place.

Thank you, Tim⁷

¹ *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),

² "[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)*

³ *Yale New Haven Hospital*, 309 NLRB 363, 368 (1992) (supervisor unlawfully threatened employee with reprisal by telling an employee that if he did not stop protected activities he would "talk" to him again; implies that the talk will not be mere conversation but will concern the employment of the offending employee).

⁴ *Valerie Manor, Inc.*, 351 NLRB 1306 (2007) (threat of unspecified reprisals).

⁵ *Equipment Trucking Co., Inc.*, 336 NLRB 277 (2001) (statement, If you don't like it, find another job, implied threat of discharge).

⁶ *Medco Health Solutions Of Las Vegas, Inc.*, 357 NLRB No. 25 (2011) (respondent's statement that, if employee could not support the respondent's policies, there were other jobs out there and perhaps "this wasn't the place for him" was an implied threat in violation of 8(a)(1)).

⁷ In *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the Board refined the standard and found that mere maintenance of a work rule may violate 8(a)(1) if the rule has a chilling effect on Section 7 activity.

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Reporting of the All Hands by Zoe Schiffer at The Verge via Twitter
<https://twitter.com/ZoeSchiffer/status/1438900821370884100?s=20>

Zoë Schiffer @ZoeSchiffer
9:21 AM · Sep 17, 2021

Here's what we're hearing from the Apple all hands this morning:

Tim Cook says women made up 50% of leadership new hires⁸ this year, but admitted there's more work to do.

Apple's app tracking transparency project: Cook says it was a little controversial. "If you think about it it's pretty simple but very profound, it just says if someone wants to track you across apps they have to ask your permission."

Apple has given \$100 million to pandemic relief and other humanitarian efforts around the world this year. Apple employees gave 162k donations.⁹

Returning to the office:¹⁰ "I know this is on some peoples' minds but not everyone's because about half our employees are back at a store or office already. For everyone else, we're still hopefully that we'll be able to be back in the office sometime in January."

Apple's hybrid work model:¹¹ Cook says "We've learned as a company what it means for everyone to come in everyday because we did that before. We know what it's like when hardly anyone comes in. We don't really know about the middle range. We need to learn."

He says the company is committed to learning and tweaking.

Tim Cook announces that Apple will give everyone in the company 3 extra days off¹² next quarter. In the US these days will go in Thanksgiving week. Global teams will pick the dates that work for them.

Now Tim and Deirdre are taking questions...

Question: I would like to know what Apple is doing to ensure pay equity¹³

Deirdre: "We do an analysis, take it to a third party, when we find any gaps at all — which sometimes we do — we close them. If you have any questions at all, ask your manager."

⁸ Work Conditions: Diversity & Inclusion

⁹ Work Conditions: Benefits, employee donation matching

¹⁰ Work Conditions: COVID-19 safety concerns at offices

¹¹ Work Conditions: Offices

¹² Pay & Hours

¹³ Pay

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Someone asked which Apple watch band is Tim's favorite. He says "I love the fact that you can change bands. You don't have to have a particular favorite, you can have favorites. I love the ones we do around Black History Month and Pride."¹⁴

Tim Cook on Epic vs. Apple ruling:¹⁵ "if you sort of back up and remember what the App Store is about, the App Store was built to be a trusted place for users so they could go explore and discover apps. It was meant to be a great business opportunity for developers." 1/

"Epic came along and wanted basically to be handled in a special way. Our rules are that we treat everyone the same. They ask us repeatedly to treat them different, we said no, and they sued us on 10 different items. The court ruled 9 of those in favor of Apple." 2/

I'm getting in trouble for tweeting out news so pausing for a moment...

Someone just said "fuck Zoe Schiffer" in the talk-apple Slack channel¹⁶ Ouch!

¹⁴ Work Conditions: Diversity & Inclusion

¹⁵ Laws, public legal actions, & other protected topics

¹⁶ Work Conditions: Ability to talk to press about pay, hours, & work conditions

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Press

iMore: Tim Cook addresses pay, diversity, privacy, and more at internal Apple meeting

“Cook reportedly told employees that 50% of new leadership hires at Apple this year were women, but said that there was more work to do. On Apple's App tracking transparency in iOS 14 he said that it was "pretty simple but very profound". The move has drawn ire from companies like Facebook who rely on heavy tracking to serve users with personalized ads.

Cook also spoke about how the company had donated \$100 million to relief during the pandemic and other causes, before addressing the company's return to the office and remote working policy.

"I know this is on some peoples' minds but not everyone's because about half our employees are back at a store or office already. For everyone else, we're still hopeful that we'll be able to be back in the office sometime in January."

Cook also said that Apple needed to learn what it was like when about half the company came into work because it only knew what it was like when either everyone was in or "hardly anyone" comes in, and that it was committed to learning and tweaking the system. The company also said it plans to give all employees an extra three days off next quarter.

Cook and Deirdre O'Brien took questions about pay equity, O'Brien stating that when Apple found gaps in pay the company closed them, and that employees should ask their manager if they had questions.

Cook also addressed the Apple vs Epic Games lawsuit and the ruling in favor of the company, saying he hoped the verdict would put some App Store discussions to bed.”