This is your new

Labor Management Law Answer Book

2019 Edition

Jones Day

Edited by
Brian West Easley, David S. Birnbaum, and Joanne R. Bush

Labor Management Law Answer Book is significantly updated since the last edition and presents the latest developments in U.S. labor law including:

Employee use of employer email for union activities: Continued application of the standard set forth in *Purple Communications* regarding whether employees may use an employer's email system for section 7 communications during non-working time is uncertain. The NLRB's General Counsel has called for mandatory submission to the Division of Advice of all cases involving claims based on *Purple Communications*, and the NLRB issued a public Notice and Invitation to File Briefs on whether the Board should adhere to, modify, or overrule *Purple Communications.* (**Q 3.13.1, Do employees have a right to use an employer's equipment or resources to communicate about union issues?**, and **Q 4.55, Can an employer limit use of its email systems during a campaign?**)

Facially neutral employer policies that potentially interfere with labor rights: The NLRB recently announced a new standard for evaluating employer policies that potentially restrict employees' section 7 rights. In *The Boeing Company*, the NLRB held that employer policies will be evaluated for "(1) the nature and extent of the potential impact on NLRA rights and (2) legitimate justifications associated with the rule," modifying the previous standard of whether employees could "reasonably construe"

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1177 Avenue of the Americas
New York, NY 10036
#250390

the policy to restrict section 7 rights, regardless of whether there was any actual restriction. (**Q 3.18, What types of company rules or handbook provisions unlawfully interfere with employees' section 7 rights?**, and **Q 7.21.3, Can an union handbill on private property?**)

Mandatory arbitration: In *Epic Systems Corp. v. Lewis*, the Supreme Court held that employers may lawfully enforce mandatory arbitration agreements that allow for only individual claims. Reversing several NLRB and court decisions, the Court ruled that the Federal Arbitration Act (FAA) requires courts to enforce arbitration agreements as written and that the NLRA does not nullify the FAA with respect to arbitration agreements that prohibit joint, class, and collective claims because such group claims are not "concerted activities" protected by section 7 of the NLRA. (**Q 3.20, Can an employer require its employees to waive any right to file joint, class, or collective claims regarding their employment?**)

Joint employers: In February 2018, in *Hy-Brand Industrial Contractors,* the NLRB vacated the *Browning-Ferris Industries* standard under which an employer could be deemed a joint employer if it possessed the authority to control the terms and conditions of employment, either directly or indirectly, regardless of whether such authority was ever exercised. Shortly thereafter, however, the NLRB vacated the *Hy-Brand* decision because of an apparent conflict of interest of one of the Board members, and reinstated the *Browning-Ferris* standard. (**Q 8.55, When are two employers considered "joint employers"?**)

Union dues deductions: In *Lincoln Lutheran,* the NLRB reversed more than fifty years of precedent, holding that an employer's obligation to deduct employees' dues from their paychecks continues past the expiration of a collective bargaining agreement. However, the Board's General Counsel has issued a memo to the regional offices requiring mandatory submission of this issue to the Division of Advice, signaling that it is interested in having the Board revisit the issue. **(Q 11.6.3, Can an employer stop deducting dues from employees' paychecks after the collective bargaining agreement expires?)**

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