

Legal Update

July 15, 2020

LABOR BOARD ALLOWS MANUFACTURER TO RESTRICT EMPLOYEE CELL PHONE USAGE

By Jon Vegosen and Seth A. Stern

The National Labor Relations Board (NLRB) recently determined that Cott Beverages Inc. had legitimate business reasons for restricting employees from accessing their cell phones on the manufacturing floor or at their work stations. The NLRB allowed the restrictions despite arguments that they inhibited employee discussions of working conditions in violation of the National Labor Relations Act (NLRA) by not allowing employees to take photos and record videos using their phones.

The case originated before COVID-19. Cott's defense focused on the prevention of distractions caused by cell phone use, which could result in safety issues, as well as the prevention of food contamination. Of course, these days, manufacturers and other companies where employees engage in hands-on collaboration might also consider limiting cell phone use for hygienic reasons to avoid spreading the virus. Some news reports indicate that COVID-19 can live on cell phone screens for up to 96 hours. Employers may also have concerns about employees capturing and circulating confidential information on their cell phones.

The *Cott* decision indicates that the NLRB will take into account legitimate employer concerns for restricting cell phone use. The NLRB reasoned that it was required to balance the rule's impact on employee rights against Cott's justification for the rule. It rejected arguments that Cott was required to draft its restrictions as narrowly as possible to prevent any avoidable infringement on employee rights.

Applying this standard, the NLRB noted that Cott's restriction was limited to the manufacturing floor and employee workstations. It found that Cott's infringement on employee rights was minor compared to employee and customer safety concerns.

That said, some of the considerations that the NLRB took into account are unique to the food and beverage industry (Cott cited FDA requirements to justify its policies). The NLRB could reach a different conclusion in a different context (for example, an office setting), so employers should still tread carefully.

Employers considering similar restrictions should properly document their legitimate reasons. They may also want to include appropriate NLRA-focused exceptions to allow employees to engage in protected activity to the extent possible. Employers might also consider other common sense exceptions, such as for employee emergencies and employee needs to check in on young children or elderly parents.

Additionally, employers should avoid adopting restrictions under circumstances that might invite scrutiny. The NLRB might have viewed Cott's restrictions differently had Cott imposed them soon after an employee made a complaint based on a cell phone recording.

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Employers considering the adoption of restrictive cell phone use policies may also want to factor in the potential adverse impact on employee morale. Many employees are “tied” to their cell phones and view them as an integral part of their day-to-day life. Employees may well resent an employer’s efforts to constrain use of their cell phones.

FVLD has extensive experience advising clients regarding the NLRA and other labor and employment matters, as well as helping clients navigate investigations, and resolve complaints, before the NLRB and other agencies enforcing labor and employment laws.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen, 312.701.6860, jvegosen@fvldlaw.com, Seth A. Stern, 312.701.6837, sstern@fvldlaw.com, or your regular FVLD contact.

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