

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: October 7, 2015

TO: Kelly Selvidge, Acting Regional Director
Region 27

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: 24 Hour Fitness
Case 27-CA-151288

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The Region submitted this case for advice on whether certain rules in the Employer's handbook are unlawfully overbroad in violation of Section 8(a)(1) of the Act. We conclude that the following rules are unlawful: the rule prohibiting behavior that is offensive to others or disruptive to the work environment; the rule prohibiting, among other things, social media postings that are false, misleading, defamatory, libelous, or embarrassing; the requirement that employees include a disclaimer if they identify themselves as an employee of the Employer in social media; the rule prohibiting the sharing of personal information; the rule prohibiting, among other things, electronically posting or transmitting messages that are disparaging or damaging to another's reputation; the rule prohibiting team members from recording conversations; and the rule prohibiting employees from contributing to public forums and from responding directly to media.

24 Hour Fitness (Employer) is a privately-owned fitness center headquartered in California. It operates approximately 420 clubs throughout the United States and employs approximately 21,000 employees. The charge in this case was filed by an individual employee in one of the Employer's facilities in Denver, Colorado.¹ The

¹ While this case arises out of the Employer's Denver facility, the Employer applies its handbook to all employees working for it and maintains its handbook on its intranet, which is available to all employees. The Region should therefore request a companywide remedial order. *See, e.g., MasTec Advanced Technologies*, 357 NLRB No. 17, slip op. at 7 (July 21, 2011) (concluding that the appropriate remedy for an unlawful companywide policy is a notice posting at all of the company's facilities);

Region has already determined that a number of the Employer's handbook rules are unlawful and that the Employer has enforced some of its rules in violation of the Act. The Region has submitted only the rules discussed herein to the Division of Advice on the question of whether they are facially unlawful.

The maintenance of a rule that would reasonably have a chilling effect on employees' Section 7 activity violates Section 8(a)(1).² The Board has developed a two-step inquiry to determine if a work rule would reasonably tend to chill protected conduct.³ First, a rule is clearly unlawful if it explicitly restricts Section 7 activities. Second, if it does not, the rule will violate Section 8(a)(1) only upon a showing that: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.⁴ In determining how an employee would reasonably construe a rule, particular phrases should not be read in isolation, but rather considered in context.⁵ Rules that are ambiguous as to their application to Section 7 activity and contain no limiting language or context that would clarify to employees that the rule does not restrict Section 7 rights are unlawful.⁶ Finally, any ambiguity in an employer's rules is construed against the employer as the promulgator of that rule.⁷

The pertinent provisions of the Employer's handbook and our conclusions are outlined below.

Guardsmark, LLC, 344 NLRB 809, 812 (2005) (same), *enforced in relevant part*, 475 F.3d 369, 380-81 (D.C. Cir. 2007).

² *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enforced mem.*, 203 F.3d 52 (D.C. Cir. 1999).

³ *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646-47 (2004).

⁴ *Id.* at 647.

⁵ *Id.* at 646.

⁶ *See University Medical Center*, 335 NLRB 1318, 1320-22 (2001) (work rule that prohibited "disrespectful conduct towards [others]" unlawful because it included "no . . . limiting language [that] removes [the rule's] ambiguity and limits its broad scope"), *enforcement denied in relevant part*, 335 F.3d 1079 (D.C. Cir. 2003).

⁷ *See Lafayette Park Hotel*, 326 NLRB at 828 (citing *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992)).

Team Member Professionalism

The Employer's "Team Member Professionalism" policy contains a standards-of-conduct provision that states, among other things:

Avoid conduct or behavior that is offensive to others or disruptive to the work environment.

We conclude that this rule is overly broad because it would reasonably be read to encompass Section 7 activities. Specifically, the blanket restriction on conduct or behavior that is "offensive to others" would limit discussion of unionization and other protected concerted activity, subjects which may be contentious or controversial.⁸ The ban on "disruptive" conduct or behavior would be reasonably construed to prohibit protected work stoppages.⁹ Further, there is no limiting language or context that would limit the rule's scope or otherwise clarify that the rule is not directed at protected conduct.¹⁰

⁸ *UPMC*, 362 NLRB No. 191, slip op. at 1 & n.5, 21 (Aug. 27, 2015) (electronic messaging policy that barred nonwork use that "may be disruptive" or "offensive" or "harmful to morale" found unlawful); *NCR Corp.*, 313 NLRB 574, 577 (1993) (unlawful rule restricting bulletin board postings that contain "offensive language").

⁹ *Purple Communications, Inc.*, 361 NLRB No. 43, slip op. at 5 & n.18, 9-10 (Sept. 24, 2013) (rule prohibiting employees from "[c]ausing, creating, or participating in a disruption of any kind during working hours on Company property" unlawfully overbroad).

¹⁰ *First Transit, Inc.*, 360 NLRB No. 72, slip op. at 2-3 (Apr. 2, 2014) (rule prohibiting "inappropriate attitude or behavior . . . to other employees," was patently ambiguous and therefore distinguishable from rules found lawful in other cases that were more clearly directed at unprotected conduct). *Cf. Palms Hotel & Casino*, 344 NLRB 1363, 1367-68 (2005) (finding rule prohibiting conduct that is "injurious, offensive, threatening, intimidating, coercing, or interfering with other employees" to be lawful, notwithstanding inclusion of the term "offensive," because employees would not reasonably construe the rule to prohibit protected activity, given the other clearly unprotected conduct that it addresses); *Tradesmen International*, 338 NLRB 460, 460-61 (2002) (prohibition against "disloyal, disruptive, competitive, or damaging conduct" would not be reasonably construed to cover protected activity, considering that the rule included examples of such conduct that were clearly illegal).

General Guidelines Regarding the Use of Social Media

The Employer’s “General Guidelines Regarding the Use of Social Media” policy includes the following guidelines:¹¹

(1) Do not post anything that is false, misleading, obscene, defamatory, profane, discriminatory, libelous, threatening, harassing, abusive, hateful or embarrassing to another person or entity. Make sure to respect others’ privacy.

....

(3) If you identify yourself as [the Employer]’s employee in any social media posting, regardless of the topic of discussion, state that the views expressed are yours, and do not necessarily reflect the view of the company.

....

(5) Never share company information that is confidential and proprietary, such as financial information, company strategy, business performance, organizational structure, personal information (i.e., confidential team member, gym member or guest data) or any other information that has not been publicly released by [the Employer]. These are given as examples only and do not cover the complete range of information that the company considers to be confidential, highly-sensitive information as defined by our Confidentiality Policy. (Note: this guideline does not include information related to a Team Member’s wages, hours or working conditions).

....

(7) This Policy will not be construed or applied in a manner that interferes with your rights under Section 7 of the National Labor Relations Act.

We conclude that social media guideline 1, which prohibits employees from posting anything that “is false, misleading, . . . defamatory, . . . libelous, . . . or

¹¹ We have numbered the social media guidelines to provide the context of the rules and for reference. In the Employer’s handbook, these guidelines appear as bullet points.

embarrassing to another person or entity,” is facially unlawful. The Board has found that similarly broad prohibitions on false, misleading, defamatory, or libelous employee speech would chill concerted communications regarding an employer’s treatment of its employees, among other Section 7 topics, for fear that they later might be disciplined because someone may determine that those statements are inaccurate or untrue.¹² In addition, the Employer’s prohibition on communications that are “embarrassing” to others would reasonably be construed to bar a broad range of Section 7 activity; “a central aspect of the Act is the right of employees to engage in ‘concerted’ acts that publicize particular labor disputes and, potentially, cause public embarrassment to the employer.”¹³

We also conclude that social media guideline 3, which requires that an employee include a disclaimer in any social media communication if the employee is identified as an employee of the Employer is unlawful because it places an undue burden on employees’ Section 7 rights.¹⁴ Employers have a legitimate interest in limiting who can make official statements for the company. However, this interest must be

¹² See *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000) (rule prohibiting employees from “[m]aking false or misleading work-related statements” facially unlawful because it restricts not only recklessly or maliciously false speech, which is unprotected, but also speech asserted in good faith which subsequently may turn out to be false), *enforced*, 297 F.3d 468 (6th Cir. 2002); *Lafayette Park Hotel*, 326 NLRB at 828 (rule against “false, vicious, profane or malicious statements” toward the company or its employees unlawful because “[p]unishing employees for [making] merely ‘false’ statements fails to define the area of permissible conduct in a manner clear to employees” (quoting *Am. Cast Iron Pipe Co. v. NLRB*, 600 F.2d 132, 137 (8th Cir. 1979))); *Great Lakes Steel*, 236 NLRB 1033, 1036-1037 (1978) (rule prohibiting distribution of “defamatory” literature found unlawful because statements of fact or opinion relevant to a union organizing campaign are protected even if they are defamatory and prove to be erroneous, unless made with knowledge or reckless disregard of their falsity), *enforced*, 625 F.2d 131 (6th Cir. 1980).

¹³ *Sheraton Anchorage*, 362 NLRB No. 123, slip op. at 1 & n.4, 6 (June 18, 2015) (rule against behavior that violates “common decency or morality or publicly embarrasses” the employer found unlawful); *U.S. Security Associates, Inc.*, Case 04-CA-066069, Advice Memorandum dated August 13, 2012, at 19 (ban on social media posts that are “embarrassing” to another person or the employer unlawful because it would be reasonably construed as barring discussions of work-related complaints).

¹⁴ See *Kroger Co.*, Case 07-CA-098566, JD-21-14, at 9-12 (NLRB Div. of Judges Apr. 22, 2014) (concluding that similar requirement was unlawful); *Zenith-American Solutions*, Case 05-CA-137182, Advice Memorandum dated April 27, 2015, at 12-13 (same).

balanced against employees' rights to engage in Section 7 activity, which includes using social media to communicate with co-workers and the public to "improve terms and conditions of employment or otherwise improve their lot as employees."¹⁵

Here, the requirement that employees, if identified as such, state a disclaimer each time they speak through social media would reasonably be interpreted to require that employees include the disclaimer whenever they express themselves as employees on any topic of discussion in a broad spectrum of social media platforms. This requirement would be especially onerous regarding social media platforms that involve discussions or forums, where participants communicate quickly and repeatedly; platforms with character limits;¹⁶ or platforms that are premised on visual communication through photographs. Additionally, it would be particularly burdensome to state such a disclaimer if an employee was posting on Facebook by "liking" a comment or post.¹⁷ Guideline 3 therefore would reasonably tend to chill Section 7 communications.

Moreover, although the Employer has a legitimate interest in ensuring that its employees' communications are not misconstrued as the Employer's official statements, its rule encompasses a far broader scope of communications than would be necessary to satisfy that interest. Because guideline 3 imposes undue burdens on employees' Section 7 rights, we therefore conclude that it is facially unlawful.

We further conclude that social media guideline 5, which prohibits employees from sharing "personal information (i.e., confidential team member, gym member or guest data)," is unlawfully overbroad. Rules that prohibit employees from sharing information about their terms and conditions of employment or employee contact information are unlawful,¹⁸ and employees would reasonably construe "confidential

¹⁵ *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 1 (Aug. 22, 2014) (internal citations omitted).

¹⁶ *Zenith-American Solutions*, Case 05-CA-137182, Advice Memorandum dated April 27, 2015, at 13.

¹⁷ *Kroger Co.*, Case 07-CA-098566, JD-21-14, at 10; *see also Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 5 (holding that a Facebook "like" can constitute protected Section 7 activity).

¹⁸ *Quicken Loans, Inc.*, 361 NLRB No. 94, slip op. at 1 (Nov. 3, 2014), *reaffirming as modified and incorporating*, 359 NLRB No. 141, slip op. at 1 n.3 (June 21, 2013) (rule prohibiting employees from sharing personnel information, such as home phone numbers, cellphone numbers, addresses, and email addresses, was unlawful); *Flamingo Hilton-Laughlin*, 330 NLRB 287, 288 n.3 (1999) (prohibition on revealing confidential information about "fellow employees" unlawful).

team member . . . data” to cover both of these topics. The coercive effect of this overbroad language is not cured by the savings clause in parentheses at the end of guideline 5, which states that “this guideline does not include information related to [an employee’s] wages, hours or working conditions.” While the savings clause clarifies that guideline 5 does not prohibit employees from divulging working conditions, it fails to address the sharing of employee contact information. Indeed, the Board has recently held that for a “savings clause” or “safe harbor” provision to be effective, it must adequately address the “broad panoply of rights protected by Section 7.”¹⁹

Additionally, the savings clause in social media guideline 7 does not adequately cure the unlawful rules in guidelines 1, 3, or 5. An employer’s express notice to employees advising them of their rights under the Act may, in certain circumstances, clarify the scope of an otherwise ambiguous and unlawful rule.²⁰ However, an employer may not prohibit employee activity protected by the Act and shield itself from liability by a general reference to protected rights via a savings clause.²¹ Furthermore, with regard to overbroad prohibitions that reasonably would be interpreted to prohibit protected activities, a general disclaimer is insufficient where employees would not understand from the disclaimer that protected activities are in fact permitted.²² The savings clause in guideline 7 contains only a general reference to “rights under Section 7 of the . . . Act,” and employees, who are laypersons, would not reasonably understand that this refers to their right to communicate with their fellow employees and others about their terms and conditions of employment or contact information. Therefore, this general statement of employee rights does not cure any of the unlawfully overbroad social media guidelines.

¹⁹ *First Transit, Inc.*, 360 NLRB No. 72, slip op. at 4 (finding savings clause to be too narrow to be effective because it “focus[ed] solely on union organizational rights”). We further conclude that the savings clause located within guideline 5 would reasonably be read to relate only to that provision. Specifically, the clause references “this guideline” and provides context for the meaning of “the information” referenced in “this guideline,” i.e., guideline 5. Accordingly, we reject the argument that it cures guidelines 1 or 3.

²⁰ *Id.*, slip op. at 3.

²¹ *Allied Mechanical*, 349 NLRB 1077, 1077 n.1, 1084 (2007).

²² *See, e.g., Ingram Book Co.*, 315 NLRB 515, 516 (1994) (finding employer maintenance of a disclaimer that “[t]o the extent any policy may conflict with state or federal law, the Company will abide by the applicable state or federal law” did not salvage overbroad no-distribution policy).

Information Security

The Employer's "Information Security" policy applies to all of the Employer's technology resources, which includes its networks, servers, computer workstations, online resources, internet access, and email, among others. The "Information Security" policy states that inappropriate system use may result in disciplinary action and could result in termination, and lists several examples of inappropriate uses, including:

Electronically posting or transmitting messages or accessing materials that are abusive, disparaging, obscene, sexually oriented, threatening, harassing, damaging to another's reputation or illegal.

We conclude that the above example is overly broad because it would reasonably be read to prohibit protected Section 7 communications. The Board has found that similarly broad prohibitions on employee communication that incorporate terms such as "disparaging"²³ or that prohibit an employee from harming a person or entity's reputation²⁴ are unlawful. Thus, employees would reasonably construe the prohibition as prohibiting them from posting or transmitting messages or viewing content that is critical of managers' treatment of employees and that may affect that manager's reputation or that disparages the company or its policies with respect to how they affect employees' working conditions. Therefore, this provision in the Employer's "Information Security" policy is unlawfully overbroad. While the other prohibitions listed in this provision generally cover activity that is not protected, they do not limit the overbroad terms, and therefore do not provide sufficient context to render the provision lawful.²⁵

²³ *UPMC*, 362 NLRB No. 191, slip op. at 1-2 & n.5, 24 (rule prohibiting employees from disparaging employer unlawful); *Quicken Loans, Inc.*, 361 NLRB No. 94, slip op. at 1 (Nov. 3, 2014), *reaffirming as modified and incorporating*, 359 NLRB No. 141, slip op. at 1 n.3, 5 (June 21, 2013) (non-disparagement policy which prohibited employees from disparaging the company, its products, officers, and employees, among others, unlawful).

²⁴ *First Transit, Inc.*, 360 NLRB No. 72, slip op. at 2 n.5, 12 (rule prohibiting employees from participating in activities that are "detrimental to the company's image or reputation or where a conflict of interest exists" unlawful); *Southern Maryland Hospital*, 293 NLRB 1209, 1222 (1989) (rule prohibiting "derogatory attacks on...hospital representative[s]" unlawful), *enforced in relevant part*, 916 F.2d 932, 940 (4th Cir. 1990).

²⁵ *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 7 (internet/bloggging policy banning "inappropriate" discussions about the company, without illustrative

This overbroad provision is unlawful notwithstanding that it is limited to employee use of the Employer's electronic communications systems. As for the provision's application to Employer-provided email, employees now have a statutory right to use their employer's email system for statutorily protected communications on nonworking time if, as here, they have been granted access to the employer's email system in the course of their work.²⁶ Further, where an employer permits employees to utilize other communication systems for non-work communications, it unlawfully discriminates if it restricts Section 7-related content.²⁷ Here, employees are permitted to utilize the Employer's electronic communications systems for incidental non-work communications.²⁸ Thus, because the restriction permits some personal use of the Employer's systems, while restricting similar use for Section 7 purposes, the rule is discriminatory and is therefore unlawful even with respect to use of the Employer's electronic communications systems other than email.²⁹

examples of what employer considered to be inappropriate, was sufficiently imprecise such that employees would reasonably understand it to encompass discussions and interactions protected by Section 7).

²⁶ *Purple Communications, Inc.*, 361 NLRB No. 126, slip op. at 1, 14 (Dec. 11, 2014).

²⁷ See *Fleming Cos.*, 336 NLRB 192, 194 (2001) (while there is no statutory right to use an employer's bulletin board, where an employer permits nonwork-related postings, it may not discriminate against union notices), *enforcement denied in relevant part*, 349 F.3d 968, 974-76 (7th Cir. 2003) (recognizing that "once companies allow postings of a *similar character* to union materials, then they may not discriminate against unions by prohibiting their postings") (emphasis added); *Honeywell, Inc.*, 262 NLRB 1402, 1402 (1982), *enforced*, 722 F.2d 405 (8th Cir. 1983). See also *Bluefield Regional Medical Center*, Case 10-CA-094403, Advice Memorandum dated August 12, 2013, at 5-6.

²⁸ The Employer's "Communications Policy," located about nine pages away from the Information Security provision in the handbook, permits employees to use the company's electronic systems for personal use "from time to time" and states that such "[b]rief and occasional personal use is acceptable as long as it is not excessive or inappropriate" and does not otherwise violate company policy.

²⁹ Therefore, we need not address whether employees have a statutory right to utilize the Employer's electronic communications systems, other than email, to engage in union or other Section 7 activity, an issue which the Board left open in *Purple Communications*. See 360 NLRB No. 126, slip op. at 14 n.70.

Recording Policy

The Employer's "Recording Policy" states the following:

Team members may not record conversations in person or over the phone with other team members, members or guests with any video or audio recording device (including cellular phones). This policy applies whether or not both parties are consenting or whether or not the person intending to record an event or conversation is disclosing that they are attempting to do so. This policy is in place to protect team member privacy as well as ensure compliance with federal and state laws.

We conclude that the Employer's "Recording Policy" is unlawfully overbroad. Employee videotaping and audio recording is protected by Section 7 when employees are acting in concert for their mutual aid and protection.³⁰ This includes, for example, documenting unsafe workplace equipment or hazardous working conditions, documenting and publicizing discussions about terms and conditions of employment, or documenting inconsistent application of employer rules or other unfair labor practices.³¹ The Employer's "Recording Policy," which contains a blanket prohibition on recording and videotaping by employees, including with cell phones, would reasonably be read to prohibit these Section 7 activities.

The Employer asserts that such a prohibition is necessary in order to ensure employee compliance with federal and state laws and to protect the privacy of its club members and employees. However, the restriction encompasses a far wider range of activities, including the Section 7 activities described above, which do not implicate the Employer's asserted concerns.³² The Employer's "Recording Policy" is therefore unlawfully overbroad.

³⁰ *Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 4 (Aug. 27, 2015).

³¹ *Id.* See also *Durham School Services, L.P.*, Case 01-CA-106539, Advice Memorandum dated March 7, 2014, at 10.

³² *Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 4 (rule prohibiting use of audio visual devices would reasonably be read to prohibit their use in furtherance of employees' protected concerted activities). Cf. *Flagstaff Medical Center*, 357 NLRB No. 65, slip op. at 5 (Aug. 26, 2011) (concluding that employees would reasonably interpret the employer's rule prohibiting recording as protecting the privacy of patients and their hospital surroundings, not as a prohibition of protected activity), *enforced in part*, 715 F.3d 928 (D.C. Cir. 2013).

External Communications

The Employer's "External Communications" policy states the following:

Only designated company spokespeople are authorized to contribute to public forums in the name of the company, its members, or its team members. If a member of the media contacts you, refer the individual to our Media Hotline. . . . Team members are not allowed to respond directly to the media or allow any filming in the club without prior company approval.

We conclude that the Employer's "External Communications" policy is unlawful because it would reasonably be read to prohibit employees from engaging in protected Section 7 communications to the public and the press. The Board has long held that employees have a Section 7 right to communicate with the public³³ and the press³⁴ about workplace complaints and labor disputes.

The Employer's "External Communications" policy prohibits team members from contributing to public forums on their own behalf or on other team members' behalf. Employees would reasonably read this prohibition to preclude their participation, as an identified team member/employee, in public forums such as news websites, city council meetings, or a wide variety of other public forums. This restriction thus prohibits employees from communicating regarding their workplace complaints, labor disputes, or other protected Section 7 matters in such forums.³⁵ It is therefore unlawfully overbroad.³⁶

³³ *Guardsmark, LLC*, 344 NLRB at 809 (employees have a right under Section 7 to enlist the support of third parties regarding complaints about terms and conditions of employment); *Kitty Clover, Inc.*, 103 NLRB 1665, 1687 (1953) ("[S]trikers are free to publicize the story of their labor dispute and call upon their employer's customers for support if they wish."), *enforced*, 208 F.2d 212 (8th Cir. 1953).

³⁴ *Hacienda De Salud-Espanola*, 317 NLRB 962, 966 (1995) (Section 7 protects communications about labor disputes to newspaper reporters); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 n. 1, 448-49 (1984) (same); *Community Hospital of Roanoke Valley*, 220 NLRB 217, 223 (1975) (employee expressions of dissatisfaction with working conditions on local television station protected), *enforced*, 538 F.2d 607 (4th Cir. 1976).

³⁵ *See, e.g., Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 3 (concluding that employees' making complaints about employer's tax withholding calculations and back wages on Facebook constituted activity protected by the Act); *Valley Hospital Medical Center*, 351 NLRB 1250, 1253 (2007) (article written by

Likewise, the clause providing that team members are not allowed to respond directly to the media violates the Act. This blanket prohibition encompasses employee communications with the media regarding their workplace complaints and labor disputes at union rallies, on picket lines, or elsewhere. The Board has found that such restrictions are not permissible.³⁷

Accordingly, the Region should issue complaint, absent settlement, consistent with the foregoing.

/s/
B.J.K.

employee on union website about staffing levels protected by the Act), *enforced mem.*, 358 F. App'x 783 (9th Cir. 2009).

³⁶ See *Trinity Protection Services*, 357 NLRB No. 117, slip op. at 2 (Nov. 30, 2011) (“[P]rohibiting employees from communicating with third parties ‘reasonably tends to inhibit employees from bringing work-related complaints to, and seeking redress from, entities other than the [employer], and restrains the employees’ Section 7 rights to engage in concerted activities for collective bargaining or other mutual aid or protection.”) (internal citations omitted).

³⁷ See, e.g., *Portola Packing, Inc.*, 361 NLRB No. 147, slip op. at 1, 26-27 (Dec. 16, 2014) (rules prohibiting employees from providing information to the media and requiring that all requests for information from the media be referred to the CFO or president, unlawful); *Trump Marina Associates*, 354 NLRB 1027, 1027 n.2, 1029 (2009) (rules prohibiting employees from releasing statements to the news media without prior approval and authorizing only certain representatives to speak with the media were unlawful), *incorporated by reference*, 355 NLRB 585 (2010), *enforced mem.*, 435 F. App'x 1 (D.C. Cir. 2011); *Leather Center, Inc.*, 312 NLRB 521, 525, 528 (1993) (handbook provision allowing only a company officer to comment to the media and requiring all media contacts be referred to a company official, unlawful).