

BRAIN TEASER



The correct answer is B.

Explanation:

A recent National Labor Relations Board (NLRB) decision ([Whole Foods Market, Inc.](#)) held that businesses are prohibited from enacting “blanket” policies that forbid employees from recording conversations or taking photographs at work without management’s permission.

The NLRB found that a “blanket” ban on recording in the workplace could prevent employees from documenting unsafe working conditions or recording statements that show discrimination. In addition, employees could reasonably interpret such anti-recording rules as discouraging employees from engaging in certain types of protected, concerted activity, such as: recording images of protected picketing, documenting unsafe workplace equipment, or publicizing discussions about terms and conditions of employment.

The NLRB could challenge an overly broad blanket policy that prohibits recording in the workplace – even if the employer does not have any union employees. Therefore, employers need to tread with caution when adopting a workplace recording policy.

Anti-recording policies should clearly state the employer’s legitimate objective and be narrowly tailored to protect a compelling business interest (like the confidentiality of patient information, trade secrets or other proprietary material). These policies should also identify specific times or places to which the ban applies instead of declaring an all-around ban.

However, several states have laws that make nonconsensual recording illegal. An employer that operates in states where nonconsensual recording is illegal should specifically reference those recording laws in its policy and specify that its restrictions on nonconsensual recording are limited to those states.

Finally, before disciplining an employee for violating company policies relating to the recording of conversations or events, employers should conduct a thorough investigation to ensure the employee was not engaging in protected concerted activities. In addition, employers should explain to employees the circumstances under which workplace recording is prohibited and advise employees of the potential consequences for engaging in prohibited conduct.