

Important Developments Regarding Employee Manuals and Rules of Conduct

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Because Labor & Employment Law is an ever-changing field, please be aware of recent and important developments affecting Employee Manuals and Rules of Conduct:

- On July 19, 2018, Governor Ricardo Rosselló signed P.R. Act 148, to amend P. R. Act 3 of March 13, 1942, known as the “Working Mothers Act” to clarify that the employment protections of this law extend to those who are working under a fixed-term employment contract during the term of the contractual relationship. However, if an expectation of continuous employment has been created, this protection will continue beyond the expiration of the employment contract. P.R. Act 148 also reiterates that the termination of employment of a pregnant employee will be presumed without just cause and the employer bears the burden to rebut this legal presumption.

Employers need to revise their policies and practices in order to ensure that maternity leave benefits and protections under Act No. 3 are extended to all their temporary and fixed-term employees for the duration of their contract.

- On June 6, 2018, the Office of the General Counsel of the National Labor Relations Board issued Memorandum GC 18-04 providing detailed guidance regarding an employer’s enforcement of its rules of conduct. The NLRB established three categories of rules of conduct that consider a balance between their negative impact on employees’ abilities to exercise their NLRA Section 7 right to self-organization and to engage in certain concerted activities, and the employer’s right to maintain discipline and productivity in the workplace. These categories are:
 - Category 1, rules of conduct that are generally lawful as, for example:
 - Prohibiting employees’ posting of statements, photographs, video or audio that reasonably could be viewed as disparaging to employees
 - Prohibiting a disturbance on Company premises or creating discord with clients or fellow employees

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- Category 2, rules that warrant individualized scrutiny as, for example:
 - Prohibiting employees from disparaging or criticizing the employer
 - Prohibiting employees from making false or inaccurate statements
- Category 3, rules that are plainly unlawful as, for example:
 - Prohibiting employees from disclosing information pertaining to the wages, commissions, performance, or identity of employees
 - Prohibiting employees from disclosing to any media source information regarding their employment, their working conditions or of those of any staff member

Employers must review and evaluate whether their rules of conduct improperly infringe in Section 7 NLRA rights of union and non-union employees in light of the NLRB OCG's Memorandum GC-18-04.

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