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# Board Adopts New Standard for Assessing Lawfulness of Work Rules

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Today, the NLRB [issued a decision](#) in *Stericycle Inc.*, adopting a new legal standard for evaluating employer work rules challenged as facially unlawful under Section 8(a)(1) of the National Labor Relations Act. Today's decision overrules *Boeing Co.* (2017), which was later refined in *LA Specialty Produce Co.* (2019). The new standard builds on and revises the *Lutheran Heritage Village-Livonia* (2004) standard. The Board had [previously invited parties and amici to submit briefs](#) addressing whether the Board should reconsider the *Boeing* standard.

In *Stericycle*, Board explained that the primary problem with the *Boeing* and *LA Specialty Produce* standard was that it permitted employers to adopt overbroad work rules that chill employees' exercise of their rights under [Section 7](#) of the Act. Under that standard, an employer was not required to narrowly tailor its rules to promote its legitimate and substantial business interests without unnecessarily burdening employee rights. The Board also rejected *Boeing's* categorical approach to work rules, under which certain types of rules were held to be always lawful, regardless of how they were drafted or what interests a particular employer cited in defense of the rule.

Under the new standard adopted in *Stericycle*, the General Counsel must prove that a challenged rule has a reasonable tendency to chill employees from exercising their rights. If the General Counsel does so, then the rule is presumptively unlawful. However, the employer may rebut the presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule. If the employer proves its defense, then the work rule will be found lawful to maintain. In line with this framework, the Board rejected the categorical approach of *Boeing* in favor of case-specific consideration of work rules.

"*Boeing* gave too little consideration to the chilling effect that work rules can have on workers' Section 7 rights. Under the new standard, the Board will carefully consider both the potential impact of work rules on employees and the interests that employers articulate in support of their rules. By requiring employers to narrowly tailor their rules to serve those interests, the Board will better support the policies of the National Labor Relations Act," said Chairman Lauren McFerran.

Members Wilcox and Prouty joined Chairman McFerran in issuing the decision. Member Kaplan dissented.

[Back to top](#)