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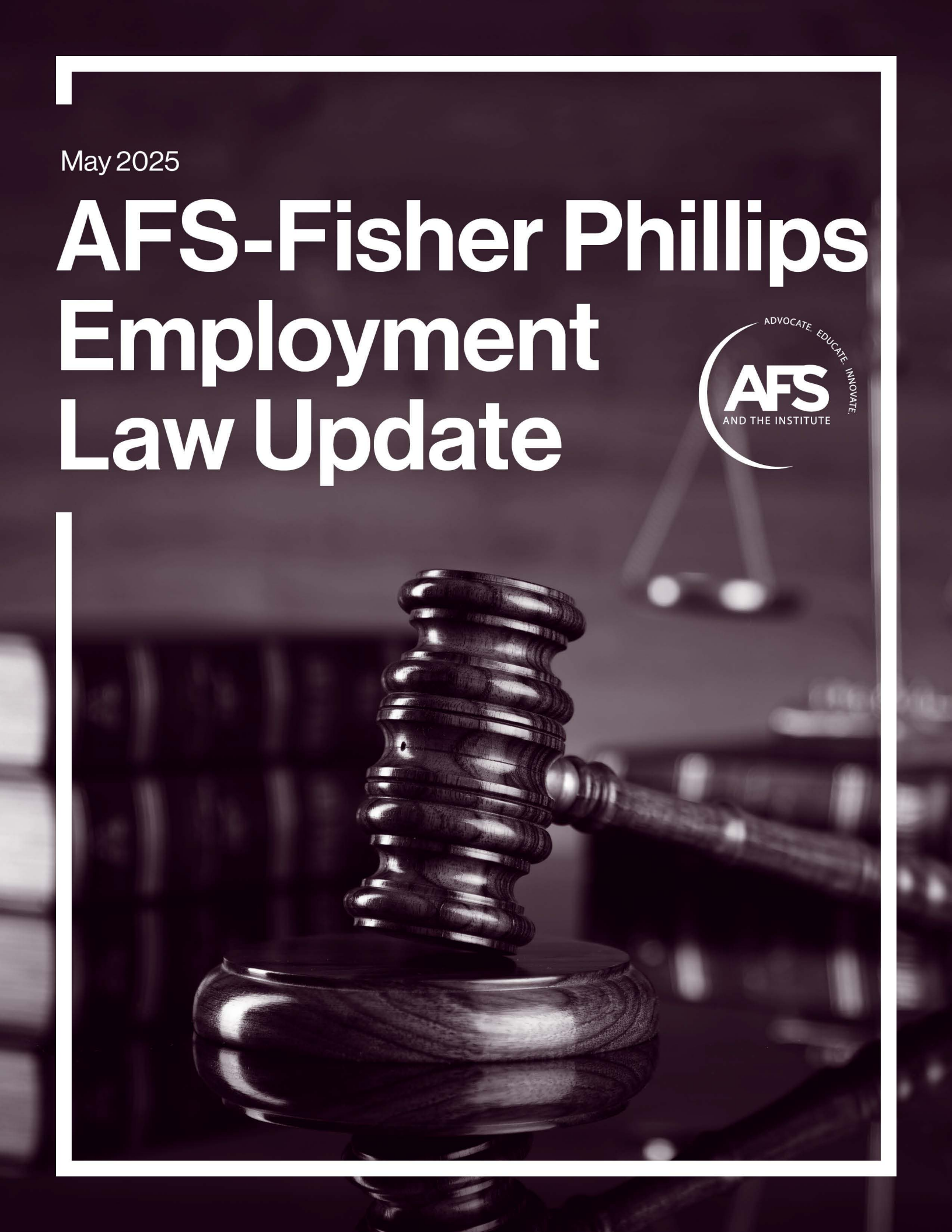

Get Ready for the Heat: 7 Practical Summer Safety Tips for Employers as OSHA Takes Next Steps for National Rule

OSHA's long-awaited heat illness rule could be inching closer to reality, with a public hearing that could determine its fate now scheduled for June 16. While many predicted the Trump administration would stall or shelve the proposal entirely, political pressure from labor unions – and growing business support for a consistent federal standard – has kept it alive. Still, it remains uncertain whether the rule gets finalized, and is even possible we'll see a scaled-back version to take shape in the coming months. No matter what happens in Washington, D.C., however, one thing is clear: employers can't afford to wait to address heat risks in the workplace. Here's a practical guide to protect your workforce this summer – whether or not a new federal standard is finalized.

Background and Update on National Heat Safety Rule
Before we provide you with a list of practical suggestions, here's an update as to where things stand on the regulatory side of things.

- **The NEP Remains in Full Force** – OSHA launched a National Emphasis Program (NEP) on heat in 2022 that remains active. It was supposed to expire in April but was extended until April 2026 by the Biden-era OSHA shortly before the change in administration. The NEP drives the agency to conduct inspections in industries with high heat exposure risk, including construction, agriculture, warehousing, and food processing. The program gives inspectors the green light to initiate heat-focused inspections on high-temperature days, even without a formal complaint or incident. You can read about the NEP here.

- **Proposed Heat Rule is Still Alive – But May Be Watered Down** – Last year, the Biden-era OSHA took things one big step forward by proposing a federal rule that would require all employers to take specific actions when the heat index hits 80°F and implement stricter measures at 90°F, including access to water and shaded rest areas, acclimatization plans for new and returning workers, training for both employees and supervisors, and emergency response procedures. You can read all about the proposal here.

- **Trump's OSHA Is Still Moving Forward** – Despite speculation that the Trump administration would immediately scrap the rule, political dynamics have changed the outlook. Strong union support, especially from the Teamsters, and growing business demand for regulatory consistency have kept the rulemaking process alive. A new DOL leader, Labor Secretary Lori Chavez-DeRemer, has signaled willingness to engage both sides on the issue, and David Keeling, the administration's nominee to head OSHA, is expected to continue moving the proposal forward – albeit with potential modifications. The final version may shift toward a performance-based standard, giving employers more flexibility in how they meet safety goals depending on their industry.

- **All Eyes on June 16** – An upcoming public hearing on June 16 will be a key milestone. Stakeholders from labor and industry will have the opportunity to weigh in before OSHA finalizes any version of the rule. We'll have a better sense for the future of the rule after that date.

- **States Still Have a Say** – Even if OSHA drops or waters down its heat safety rule, some states have their own heat-related rules in place requiring employers to take certain affirmative steps to protect workers. Check with your safety counsel to determine what standards are effective in your local area.

7 Practical Steps to Protect Workers from Summer Heat
Regardless of what rules govern your workplace, here are seven steps you can take to best protect your workers as temperatures rise across the country.

1. Monitor the Heat Index – Not Just the Temperature
The **heat index** (temperature + humidity) is a better indicator of risk than temperature alone. Use free apps or local weather services to track conditions at your worksites.

- Start precautions around **80°F heat index**
- Increase protections at **90°F and above**

2. Provide Ample Water and Easy Access to It
Hydration is your first line of defense.

- Ensure cool water is available within easy reach
- Encourage drinking water every 15 to 20 minutes
- Don't rely on workers to request breaks –make hydration routine

3. Schedule Smart – And Be Flexible
Plan the most strenuous tasks for early mornings or cooler parts of the day.

- Rotate workers to reduce prolonged exposure
- Allow for longer or more frequent breaks as heat increases
- Use fans, shaded areas, or cooled rest stations

4. Create a Heat Illness Prevention Plan
Don't rely on chance to ensure that workers are best protected. Develop a plan in writing and review it with teams before summer peaks. Your plan should cover:

- Identifying symptoms of heat illness
- Response protocols and emergency procedures
- Training and acclimatization policies
- Indoor and outdoor heat risks

5. Implement Acclimatization for New and Returning Workers
The risk of heat illness is highest during the first few days on the job.

- Ease in new workers gradually over five to seven days
- Start with lighter tasks and increase workload over time
- Pair new workers with trained supervisors for close monitoring

6. Train Supervisors to Recognize Red Flags
Train supervisors in emergency response procedures and empower them to act quickly. Make sure frontline leaders can spot:

- **Early signs:** dizziness, fatigue, heavy sweating
- **Urgent signs:** confusion, fainting, hot dry skin

7. Document Everything
With OSHA's heat emphasis program still active, enforcement will continue even without a final rule.

- Keep logs of training, safety meetings, complaints, and response steps
- Document environmental monitoring and heat-related incidents
- Update written policies and tailor them to your workplace

And Just Like That …. the EEO-1 Reporting Portal is Open: 5 Quick Tips for Employers

The EEO-1 reporting portal just opened yesterday and the turn-around time is quick: this year employers only have until June 24 to submit their data. Private employers with at least 100 employees and federal contractors with at least 50 employees need to begin sorting data by employee job category, as well as sex and race/ethnicity, to turn over to the Equal Employment Opportunity Commission (EEOC) during the reporting window. Here's what you need to know about filing your 2024 EEO-1 Component 1 data this year and the five steps you'll want to take right away to file on time.

What's New This Year?
The EEO-1 Reporting Portal welcomes users with message from the EEOC's new Acting Chair Andrea Lucas. She opens with a more personal message than we typically see and reminds employers about their non-discrimination obligations. Here's a breakdown of what Lucas says:

- **Take no action motivated by an employee's protected characteristic.** "As you report data on your employees' race, ethnicity, and sex, I want to take this opportunity to remind you of your obligations under Title VII not to take any employment actions based on, or motivated in whole or in part by, an employee's race, sex, or other protected characteristics."
- **Don't use employee demographic data to discriminate.** "Your company or organization may not use information about your employees' race/ethnicity or sex — including demographic data you collect and report in EEO-1 Component 1 reports — to facilitate unlawful employment discrimination based on race, sex, or other protected characteristics in violation of Title VII."
- **Title VII's protections apply equally to all workers**. This is true "regardless of their race or sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees or applicants are harmed."
- **There is no "diversity" exception to Title VII's requirements.** The message goes on to refer the reader to the EEOC's technical assistance Q&A document "What You Should Know About DEI-Related Discrimination at Work" and President Trump's recent executive order titled "Restoring Equality of Opportunity and Meritocracy."

The message serves as a reminder that employers have never been permitted to use the EEO-1 report or the demographic data contained in the reports to violate Title VII of the Civil Rights Act.

Key Dates and Resources

The 2024 EEO-1 Component 1 data collection window opened on May 20.
The deadline to file is June 24 at 11:00 PM Eastern Time.

The 2024 EEO-1 instruction booklet is now available here.

The EEOC's EEO-1 Component 1 online Filer
Support *Message Center* also is now open.

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Your 5-Step Strategy Plan

1. Pick a Date
As in the past, EEO-1 reports require employers to pick a payroll end date between October 1, 2024, and December 31, 2024, as your "workforce snapshot period." Employers will report all employees as of the selected payroll date. So, while you might have fewer than 100 employees on the payroll date selected, **you still must report if you reached 100 or more employees during any point of the fourth quarter of 2024.** This change to having 100 employees at any time during the fourth quarter was new last year and caught many smaller employers by surprise.

2. Categorize Your Workforce
Next, ensure that your job titles are categorized correctly and consistently. The EEO job categories are:

(1.1) Executive/Senior-level officials and managers

(1.2) First/Mid-level officials and managers

(2) Professionals

(3) Technicians

(4) Sales workers

(5) Administrative support workers

(6) Craft workers

(7) Operatives

(8) Laborers and helpers

(9) Service workers

Be sure you check your job titles carefully as each job title should only be associated with a single EEO-1 job category.

3. Let Your Employees Choose
Give your employees an opportunity to self-identify their sex and race/ethnicity – and provide a statement about the voluntary nature of the inquiry. The race/ethnicity categories are unchanged:

- **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

- **White (Not Hispanic or Latino):** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino):** A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino):** A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino):** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino):** A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino):** All persons who identify with more than one of the above five races.

In this year's instructions, only binary options for reporting sex are available in the EEO-1 reporting form. Do not report non-binary employees for 2024.

4. Choose a Point of Contact
Designate an employee as the "account holder" who will file the EEO-1 report through the EEO-1 Component 1 Online Filing System (OFS). Note that there are separate instructions for new filers and for those who are changing their point of contact. Account holders must submit the workforce demographic data electronically in the OFS through either manual data entry or data file upload. The employer's certifying official must then certify the EEO-1 Component 1 report(s) in the OFS.

5. File on Time!
File by June 24 – or earlier! In the past, the EEO-1 reporting system has slowed down significantly as the deadline approached, which makes filing more challenging. You might want to allow yourself sufficient time before the deadline so you aren't scrambling at the last minute with technical challenges. Typically, the EEOC does not provide for extensions.

Why Good Documentation Matters for Safety Professionals, and What Can Go Wrong Without it – 5 Best Practices to Implement Today

No matter the industry – construction, manufacturing, healthcare, or beyond – the well-being of your workers is non-negotiable. And behind every solid safety program is a professional making sure the gears are turning: overseeing policies, conducting training, enforcing regulations, and generally staying on top of things. But there's one often-overlooked part of the job that can make or break a safety program – documentation. This Insight will unpack why documentation matters, what can go wrong if you don't do it right, and provide you with five best practices to build smart, reliable recordkeeping habits.

Why Documentation is Essential

- **Proving Compliance:** Officials at the Occupational Safety and Health Administration (OSHA) and at state agencies don't just want to hear that your safety program exists – they want to see it. Documentation is the evidence. You need to be able to show what hazards were identified, which trainings took place, how equipment was inspected, and what actions were taken after incidents. These aren't just boxes to check, they're the backbone of legal compliance and internal accountability.
- **Promoting Consistency:** Turnover happens. So do leadership changes, shifting job roles, and evolving procedures. Documentation keeps safety efforts from unraveling during transitions. Clear written records like standard operating procedures (SOPs), safety checklists, and meeting minutes all ensure that safety protocols don't vary wildly from site to site or shift to shift. They also provide a resource for new team members to quickly familiarize themselves with your safety culture and standards.
- **Backing Up Training Efforts**: Training is only as good as your ability to prove it happened. Keeping records of dates, topics, and employee participation ensures you can demonstrate what happened. Solid documentation does more than protect you during audits. It also helps identify gaps in your program – like employees who missed a session or topics that need reinforcement – and demonstrates compliance with labor laws and regulations.

What Happens When Documentation Falls Short

- **Legal Trouble:** In the aftermath of a workplace injury or fatality, investigators will want to see what your organization did to prevent it. If your documentation is spotty or nonexistent, you could be facing citations, lawsuits, or worse. And it's not just the company on the hook. Safety professionals themselves may be called to answer for gaps in recordkeeping, with reputational and career consequences.
- **Insurance and Liability Headaches:** Your insurer wants to see that you took reasonable steps to prevent harm. If you can't show that training was completed, inspections were done, and risks were addressed, you may struggle to get a claim paid – or face higher premiums down the line. In some cases, poor documentation could even jeopardize your coverage entirely.
- **Operational Blind Spots:** Without documentation, it's hard to spot patterns. Are the same hazards showing up again and again? Are injuries trending upward in

one department? Documentation lets you identify trends and take action before problems escalate. Without it, you're flying blind.

- **Reputational Damage:** News of workplace accidents travels fast. If your organization is seen as careless about safety and can't prove otherwise, you risk losing the trust of workers, customers, investors, and the public. Being able to point to documented efforts is often the best defense against damage to your brand.

5 Best Practices for Bulletproof Documentation

If you're looking to strengthen your documentation habits, start here with these five best practices:

💻 **Go Digital.** Paper gets lost. Digital tools offer secure storage, easier searchability, and faster sharing. Cloud-based platforms also make it easier to update and audit records across multiple sites.

🔍 **Audit Regularly.** Schedule routine reviews of your safety records – training logs, inspection reports, incident files – to catch gaps before they become problems.

📝 **Be Detailed.** Vague records aren't much better than no records. Include dates, names, specifics of what was covered, and any follow-ups.

📄 **Standardize.** Use consistent formats for forms and reports. This makes it easier to analyze data, spot trends, and ensure nothing falls through the cracks.

👥 **Train Your Team.** Documentation isn't just the safety pro's job. Supervisors, leads, and frontline employees should understand what needs to be documented, how to do it correctly, and why it matters. A quick orientation or periodic refresher can go a long way toward building a safety culture where everyone contributes to a clear, complete paper trail.

Employers Still Need to Follow NLRB's Strict Handbook Rules – For Now
WHAT YOU NEED TO KNOW ABOUT CURRENT STANDARD AND WHEN IT MIGHT CHANGE

With a new presidential administration now in place, many employers are hopeful that the National Labor Relations Board (NLRB) will return to more employer-friendly policies – especially those related to handbook policies. However, policy shifts at the Board take time, and any efforts to roll back Biden-era case law shaping this workplace standard will not happen overnight. Despite this year's political shift, the *Stericycle* standard – which creates a stringent test for evaluating the legality of workplace rules – is still being applied by Administrative Law Judges (ALJ) across industries. Unfortunately for employers, recent rulings show that the doctrine likely won't be narrowed in the immediate future absent direct action by a new Board. Until that happens, what does your company need to know about this problematic standard?

Recap: What Is the *Stericycle* Standard?
In its August 2023 Stericycle, Inc. decision, the Board:

- Overruled the more employer-friendly *Boeing Co.* standard (We wrote about the *Boeing* standard and our predictions here);
- Adopted a new framework for evaluating facially neutral workplace rules and policies;
- Declared that rules are presumptively unlawful if a reasonable employee could interpret them as chilling protected concerted activity under Section 7 of the NLRA; and
- Placed the burden on employers to prove that any rule found presumptively unlawful is narrowly tailored to advance a legitimate and substantial business interest.

This stricter approach has created uncertainty for employers. Many policies that employers would consider rather typical, including those addressing workplace conduct or social media use, may now be presumed unlawful unless clearly and specifically justified.

Key Takeaway: The *Stericycle* standard remains a high bar for employers. Any rule that could potentially be read to discourage protected concerted activity may be struck down unless the employer can prove it is necessary and narrowly written. Employers should continue reviewing and updating workplace policies with this framework in mind.

Recent Decisions Applying *Stericycle*
Who helps shape and interpret how *Stericycle* applies in the real world? ALJs play a central role in defining what the standard means for employers. After a Complaint is issued alleging unfair labor practices, an ALJ conducts a hearing, reviews the evidence, and issues a decision with findings of fact and conclusions of law. While those decisions

can be appealed to the Board, they often serve as the first and most practical interpretation of evolving Board precedent.

Recent ALJ decisions across industries show that *Stericycle* is not a relic of the prior Board. It remains the law of the land, and employers cannot afford to ignore it. The following rulings reaffirm that ALJs continue to apply *Stericycle* as binding precedent when evaluating the legality of workplace rules and policies.

- **Case**: University Hospitals Cleveland Medical Center (JD–75–24) (12/2/24)
- **Location**: Cleveland, Ohio
- **What happened**: A hospital maintained two work rules at issue: one restricting residents from joining any organization that might strike, and another barring residents from sharing "any information relative to the Hospital" with the press.
- **ALJ finding**: Applying *Stericycle*, the ALJ found both rules facially unlawful because they would reasonably chill employees from engaging in protected concerted activity. The ALJ rejected the hospital's argument that patient privacy or ethical concerns justified the rules, and noted that even if *Boeing* still applied, the outcome would likely be the same.
- **Key point**: The ALJ applied *Stericycle* as the governing standard, emphasizing its retroactive application and higher burden for employers.
- **Case**: Amazon.com Services LLC (JD–09–25) 2/12/25
- **Location**: Swedesboro, New Jersey
- **What happened**: Multiple union and worker groups challenged the employer's Unpaid Time Off (UPT) policy after the company automatically deducted time for absences due to protected walkouts.
- **ALJ finding**: The judge held that while the UPT policy was facially neutral and lawful under both *Stericycle* and *Boeing*, its application violated Sections 8(a)(1) and 8(a)(3). Specifically, the employer unlawfully failed to restore UPT hours deducted for strike activity and assessed attendance points despite knowing the absences were protected.
- **Key point**: Even though the ALJ referenced *Boeing*, *Stericycle* was applied as the governing standard. This illustrates that ALJs may acknowledge prior precedent, but *Stericycle* still controls and imposes the more stringent burden on employers.
- **Case**: Bookholders, LLC (JD–27–25) (3/31/25)
- **Location**: Blacksburg, Virginia
- **What happened**: The employer maintained a mandatory arbitration agreement and a rule requiring employees to obtain approval before joining or creating any social media groups amongst co-workers.
- **ALJ finding**: Both the arbitration agreement and the social media rule were found **presumptively unlawful**. The judge applied *Stericycle* and noted the policies would also be unlawful even under the older, more lenient *Boeing* standard.
- **Key point**: This case underlines that *Stericycle* is not just replacing *Boeing* but setting a higher bar, which is one that many policies cannot clear, even those that may have survived pre-2023 scrutiny.

Key Takeaway: ALJs are applying *Stericycle* across a wide range of cases and contexts, from confidentiality and civility rules to separation agreements and post-employment restrictions. The standard's reach is broad, and no category of employer policy is automatically safe from scrutiny.

What This Means for Employers
You should continue to:

- Review and revise employee handbooks, confidentiality policies, and separation agreements to match the strict *Stericycle* standard.
- Evaluate whether any work rule could reasonably be interpreted to discourage employees from engaging in protected concerted activity.
- Be cautious about civility, code of conduct, respect, and social media policies.
- Avoid overreliance on savings clauses or disclaimers as these will not cure vague or overbroad language.
- Expect continued enforcement by NLRB Regional Offices and ALJs applying *Stericycle* until it is expressly overturned.

Key Takeaway: Employers should not assume that a more conservative Board will immediately or retroactively shift standards. Don't let the political shift lull you into inaction. Policy reviews and compliance efforts must continue under the current *Stericycle* standard until further notice.

Looking Ahead
Employers might feel hopeful upon learning that President Trump nominated Crystal Carey to serve as the Board's General Counsel. If confirmed, Carey would play a key role in shaping the Board's enforcement priorities and legal arguments. But while a future Trump-appointed NLRB may eventually overturn or revise *Stericycle*, any changes will take time. For now, these decisions summarized above remain intact and continue to shape labor law, due to a lack of quorum at the Board. As of now:

- There has been no decision overruling *Stericycle.*
- The standard is being enforced retroactively.
- Employers must remain vigilant in assessing policies through the lens of the current *Stericycle* framework.

Until a new standard is formally adopted, assume *Stericycle* is here to stay. Continue monitoring ALJ decisions and NLRB developments closely and consult with counsel before implementing or enforcing workplace rules that could implicate employee rights under the NLRA.