

NLRB Rules Non-Disparagement, Confidentiality Provisions Violate Labor Act

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In a [ruling](#) that could have far-reaching implications, the National Labor Relations Board (NLRB) has determined that non-disparagement and confidentiality provisions in releases related to severance agreements or settlements violate the National Labor Relations Act (NLRA) if they require workers to waive rights such as their ability to discuss the financial terms of their separation, or even how they were treated by the company.

Non-disparagement and confidentiality provisions, in which employees agree not to make negative remarks about their former employer or to disclose confidential information, are common in release agreements. The NLRB found that such releases may not be permissible if they are so broad that they prevent workers from engaging in protected activity, such as helping other employees with their workplace issues or publicly discussing employment conditions at their former employer's business. As a result of this ruling, employees who sign a release to obtain enhanced severance benefits or to settle a claim against their employer may no longer be prevented from discussing the employer's alleged violations of discrimination laws or health or safety regulations.

Although the NLRB enforces the NLRA, which deals with unionized workplaces, the Board's ruling may be legally binding on private sector employers that are subject to the discrimination and safety laws. In addition, employers could potentially face unfair labor practice charges simply by presenting an employee with a release agreement that contains broad confidentiality or non-disparagement clauses.

Based on this ruling, employers will have to weigh the risks and benefits of including such non-disparagement and confidentiality language in separation agreements. As the law stands now, those provisions should either be removed, or language should be inserted in the agreements that specifically states that the confidentiality and non-disparagement restrictions do not prevent employees from filing charges with the EEOC or the DOL or engaging in legally protected activities — provisions which are standard in many release agreements already.

It is likely that the ruling will be appealed, and it may be some time before the courts determine whether the new rule will ultimately stand. The ruling could also be reversed if the NLRB membership changes as a result of a Republican victory in the next Presidential election. However, for now, this ruling will significantly impact how employers and employees approach release agreements.

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Steve Beiser