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News & Types: 雇用／労働法／福利厚生関連情報

【雇用法フラッシュニュース】全国労働関係委員会（NLRB）、離職契約上の機密保持条項および誹謗中傷行為禁止条項の使用を禁止

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Practices: 雇用／労働法／福利厚生

On February 21, 2023, The National Labor Relations Board ("NLRB") issued a decision (*McLaren Macomb*, 372 NLRB No. 58 (2023)), in which it held that confidentiality and non-disparagement clauses in severance agreements unlawfully violate employees' rights to engage in protected concerted activity. In doing so, the NLRB has broadly concluded that all such clauses restrict employees' rights to speak about wages, hours, and other such terms of employment.

Importantly, the NLRB's holding is prospective in nature in that it will not impact severance agreements entered into prior to the date of the decision although will affect future severance agreements. Notably, the NLRB decision only applies to employees covered by the National Labor Relations Act, or non-supervisory employees. Therefore, the impact of the decision is limited.

Whether the decision will ultimately withstand scrutiny by the federal courts remains to be seen at this time. Considering severance is not a right for most employees, the ability by employers to impose terms in exchange for providing severance pay is a fundamental principle behind such agreements. In spite of the decision, employers may continue utilizing confidentiality and non-disparagement clauses within severance agreements with supervisory employees (who are not covered by the NLRA). As to non-supervisory employees, employers should use caution when drafting severance agreements for such employees until further notice.

Please contact Naureen Amjad or a member of the Employer, Labor and Benefits group with any questions about this decision, as well as to ensure that the severance agreements your Company is utilizing are appropriately drafted.

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