

Board's New Boeing Test Still Blocks Separation Agreements

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A National Labor Relations Board Administrative Law Judge (ALJ) has taken the first whack at applying the Board's new test in *Boeing*. He concluded that terms included in a university medical center's separation agreements were phrased in such broad terms that they interfered with employee rights under the National Labor Relations Act (NLRA). The ALJ focused on two terms of the separation agreements that Baylor University Medical Center had offered to 27 employees. One would have barred the employees from participating in "any Claim brought by any third party" against Baylor. The second would have required the employees to keep secret all "confidential" information including information about employment-related issues. ALJ Robert A. Ringler determined that even under the new test in *Boeing* the mere offer of those two provisions violated the NLRA. In 2001, the Board had determined that an employer would interfere with rights protected under the NLRA by offering contract terms that could reasonably be construed to violate federal labor law. However, on Dec. 14, 2017, the new Trump NLRB adopted a different test for reviewing policies, rules, and handbook provisions, dividing them into several categories. ALJ Ringler held that the restrictions on supporting legal claims and sharing information were unlawful because they would block employees from assisting in NLRB investigations. The prohibition on disclosing confidential information was simply overly broad and could reasonably be found to interfere with employees discussing their own wages and benefits. A copy of the decision is available [here](#).

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