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UPDATE: Can You Require Employees To Keep Harassment And Other Workplace Investigations “Confidential”?

January 27, 2020 | [Labor And Employment, National Labor Relations Board](#)



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For several years, employers operated in an area of uncertainty with respect to whether they could require employees to [keep a workplace investigation confidential](#) while it was ongoing. This was due to the fact the National Labor Relations Board (NLRB) took the position that employers who mandated such a requirement violated labor law. Thankfully, the [NLRB backed off this position](#) at the end of last year, and a newly released advice [memo](#) from the agency shows that the reversal had been in the works for some time.

The memo is dated May 2019, but it was not publicly released by the NLRB until January 2020. At issue was a company that allegedly violated the National Labor Relations Act by maintaining a rule prohibiting employees from disclosing information about any ongoing workplace investigations. The NLRB's Office of the General Counsel noted the requirement was unlawful under current Board law, but it went on to say that it believed prior Board precedent on this point should be overturned. That is, it effectively foreshadowed the reversal we saw months later at the conclusion 2019.

That companies can again generally require employees to keep workplace investigations confidential while they are pending is a huge development and "win" for employers. Management should keep this in mind as they charter their overall strategy and framework for investigations moving forward.