



Zip It: Severance Agreement Confidentiality Provisions Upheld

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Many companies tender severance agreements to employees when they are separated from employment under various circumstances. These agreements routinely contain releases of claims that seek to resolve most potential claims a former worker may have against an organization. Severance agreements also typically include confidentiality provisions that preclude an employee from disclosing the financial terms of the agreement. While the National Labor Relations Board (NLRB) [previously held](#) such clauses to be unlawful at times, a recent advice memo from the agency indicates the Board now permits them.

[At issue in the case](#) was a worker who was terminated by a company for having what the employer believed to be improper workplace discussions. After the employee was discharged, the company and worker entered into a severance agreement. That agreement had a general release of claims as well as a confidentiality clause and a non-participation provision that prohibited the employee from participating in personal legal actions against the company. An unfair labor practice charge was filed with the NLRB claiming those two provisions violated the National Labor Relations Act (NLRA).

The NLRB's General Counsel office determined both the confidentiality and non-participation clauses were lawful. The confidentiality clause required the employee "to keep the terms of the separation agreement confidential, except

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for consultations with an attorney or family member.” The memo found this “clearly is not violative” based on recent Board precedent upholding those types of confidentiality restrictions.

The non-participation clause at issue stated:

“The release to which you are agreeing in the preceding Paragraph 7 includes, without limitation, any claims related in any way to the termination of your employment, except for any action necessary to enforce this agreement or any lawful claim alleging that this agreement is not knowing and voluntary under the ADEA. Except as otherwise provided in this Paragraph 8, [the charging party] will not voluntarily participate in any judicial or other adversarial proceeding of any nature or description against any member of the Company Group related to your employment with the [employer] or the termination of your employment.”

This was determined to be lawful because a reasonable employee would construe this as a bar from pursuing personal claims against the company but not restricting assisting fellow former employees in their own litigation – which could be overbroad and unlawful.

Bottom line: this is good news from the NLRB on the severance agreement front, as it indicates companies now have more flexibility in this context.