

NLRB Invalidates Another Employer Arbitration Agreement – But NOT Under D.R. Horton

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On April 13, the National Labor Relations Board (NLRB) invalidated yet another employer arbitration program. This time, however, the NLRB did not do so under its infamous *D.R. Horton* case. In [Dish Network, LLC](#), the NLRB struck down an arbitration agreement an employer used with its workforce because: 1) as drafted, employees would reasonably construe it as limiting or prohibiting them from filing charges with the NLRB; and 2) a confidentiality provision within the agreement that prohibited employees from discussing anything related to arbitration proceedings, even those related to terms and conditions of employment, was overly broad and infringed on employees' rights to discuss such issues under the National Labor Relations Act. While the NLRB's general counsel also alleged the arbitration program should be found unlawful under *D.R. Horton*, the NLRB declined to strike it down on that basis because there was no explicit provision in the agreement that limited class or collective actions, and there was no evidence the company ever tried to preclude such actions from forming based on the agreement. This case serves as an important reminder for companies using or considering an arbitration program to resolve workplace disputes with its employees that the NLRB aggressively scrutinizes such agreements. Accordingly, care must be taken when drafting and implementing the agreements so they account for recent NLRB decisions and guidance. Failure to do so may result in the program being partially or wholly invalidated.

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