

The SEC Joins The NLRB In Attacking Employee Confidentiality Agreements

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Mark S. Kittaka
Partner

Recently, the U.S. Securities and Exchange Commission (SEC) fined an employer \$130,000 for making employees sign confidentiality agreements during an investigation. The agreement stated that the employees could be terminated if they discussed the investigation with anyone outside the company without prior approval of the company's legal department. The SEC charged the company with violating whistleblower protection Rule 21F-17 enacted under the Dodd-Frank Act, which prohibits companies from taking any action to impede whistleblowers from reporting possible securities violations to the SEC.

This case is significant since it is first case to address a confidentiality agreement as a means of pre-emptively stopping whistleblowing. This follows this administration's trend of attacking employee confidentiality agreements or confidentiality provisions in handbooks as shown through the actions of the National Labor Relations Board (NLRB) in various unfair labor practice proceedings against employers. As we have covered in prior blog posts, the NLRB has invalidated [confidentiality rules, policies](#) and has issued an entire [guidance memorandum](#) describing the handbook policies it finds illegal (including confidentiality provisions).

Employers need to be aware of the federal government's heightened scrutiny of these types of agreements and policies to avoid fines and penalties. While Dodd-Frank is limited to publicly traded companies, the NLRB is challenging the confidentiality provisions of both private and publicly traded companies. Consult with your legal counsel for review of your policies or agreements.

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