



Trump's NLRB Signals It Will Revisit Board's Stance On 'Confidential Severance Agreements'

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On Dec. 27, 2017, the National Labor Relations Board (NLRB) issued an [order](#) in which President Trump's two appointed members – Marvin Kaplan and William Emanuel – stated that they want to revisit the board's stance on confidentiality provisions contained in severance agreements (i.e., provisions that prohibit disclosures related to the terms and sometimes even the existence of the agreement). The two members specifically noted in the order that "they believe that, to the extent not already permitted under Board precedent, the legality of confidential severance agreements for former employee should be reconsidered."

In recent years, the NLRB has taken a hard-line view against "confidentiality" obligations imposed by employers on employees in various [contexts](#) and often has invalidated such [clauses](#) under the theory that they chill employees' [Section 7 rights](#) to discuss terms and conditions of [employment](#). It was very rare to see the NLRB uphold such policies in any context unless they were very [narrowly tailored](#).

The comments in the Dec. 27 order by the newest NLRB members signals a shift is underway and the board may become more tolerant of company-imposed restrictions. In fact, the NLRB [announced](#) a more lax rule for evaluating employer personnel policies generally on [Dec. 14, 2017](#), which likely will be more favorable to companies seeking to enforce or implement various workplace rules.

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A ruling on confidentiality clauses in severance agreements may be coming later this year based on the Dec. 27 order. Stay tuned.