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Texas Lawyer: Recent Federal Legislation and Policy Impose Restrictions on Texas's Strong Fundamental Right of Freedom of Contract

Larry Carbo and Julie Offerman discuss recent National Labor Relations Board ruling on severance agreements in Texas Lawyer article

Texas Lawyer

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In a Texas Lawyer article, Chamberlain Hrdlicka's Labor & Employment attorneys Larry Carbo and Julie Offerman discuss the majority decision by the National Labor Relations Board (NLRB) overruling its prior precedent and holding that an employer violated the National Labor Relations Act (NLRA) by offering a severance agreement with non-disparagement and confidentiality provisions that would prohibit permanently-furloughed employees from disclosing the terms of the severance agreement and making harmful or disparaging remarks about the employer.

The non-disparagement provision at issue in *McLaren* prohibited statements to the employer's employees or the general public that "could disparage or harm the image of Employer, its parent and affiliated entities and their officers, directors, employees, agents and representatives." The NLRB noted that the ability to make public statements about the workplace is central to employees' exercise of NLRA rights. However, the NLRB did reaffirm that employees do not have a right under the NLRA to make statements that are so "disloyal, reckless or maliciously untrue as to lose the [NLRA]'s protection."

Carbo and Offerman recommended that employers act now to increase the chance that their severance agreements will withstand NLRB scrutiny. While the NLRB's decision suggests a "narrowly tailored" agreement would be lawful, the NLRB has not provided guidance on what it would deem acceptable. At a minimum, employers should carefully analyze their severance agreements to ensure the contractual language is not overly broad and cannot be interpreted as preventing an employee from discussing wages, severance, or other employment terms and conditions, assisting or cooperating with the NLRB, or engaging in other activities protected by Section 7.

Carbo and Offerman also noted that although the *McLaren* decision concerned severance agreements, the NLRB's reasoning applies to similar provisions in other employment-related contracts and policies, such as an offer letter or employment agreement. Accordingly, employers should ensure that non-disparagement and confidentiality restrictions in other contracts pass muster under *McLaren*.

To learn more, read the full article [here](#).