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Update On Severance Agreements: SpaceX Fights Back Against The National Labor Relations Board Declaration That Its Severance Agreements Are Invalid

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Elon Musk's SpaceX is the latest in a line of businesses to fight back against complaints by the National Labor Relations Board ("NLRB") alleging unfair labor practices. Amazon recently challenged the NLRB's position that it engaged in alleged illegal retaliation against workers at its Staten Island warehouse by claiming that the NLRB's actions were unconstitutional. Now SpaceX has filed a lawsuit claiming that the NLRB's actions are unconstitutional after the Agency declared that SpaceX's severance agreements contain invalid confidentiality and non-disparagement clauses.

The National Labor Relations Act ("NLRA") provides that workers can engage in "concerted activity" in order to improve their working conditions, which includes sharing information about their working conditions. In a March 20, 2024 Complaint, the NLRB accused SpaceX of entering into severance agreements with terminated employees nationwide that contained unlawful confidentiality and non-disparagement clauses. SpaceX's confidentiality clause binds the employee not to publicize or disclose, except to attorneys, accountants, tax preparers, and financial advisors, the provisions of the settlement agreement. The non-disparagement clause binds the employee not to "disparage the Company, its officer, directors, employees, shareholders, and agents in any manner likely to be harmful to its or their business, business reputation, or personal reputation." The severance agreement excludes from its ban against disclosure of "information about unlawful acts in the workplace, such as harassment or discrimination." The third clause that the NLRB found unlawful limited the ability of the employee to provide assistance to any employee with "respect to any complaints, concerns, claims or litigation or any kind" against the company unless compelled by court order or subpoena. The NLRB's Complaint alleges that the above clauses, and others, constitute unfair labor practices against employees because they prevent employees from being able to engage in concerted activity.

On April 19, 2024, SpaceX fired back by filing a Complaint alleging that the NLRB's Complaint and requested relief, including subjecting SpaceX to an administrative proceeding was unlawful. The Complaint alleges that the NLRB does not have the legal authority to bring SpaceX before an administrative law judge for a hearing. SpaceX claims that doing so violates the United States Constitution by usurping authority that does not belong to it.

TAKEAWAY: Employers should continue to follow the legal battles between the NLRB and SpaceX over the legality of certain clauses in severance agreements in order to ensure that their severance agreements are up-to-date with the law. This area of the law is constantly changing, and if you need assistance in making sure your business's severance agreements are lawful, or with any other area of federal or New Jersey employment law, contact [Stephanie Gironde](#) or any member of the Wilentz [Employment Law](#) Team.

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