

WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

Employment Law Update: NLRA and NLRB Disfavor Restrictive Covenants

01/07/25

Over the past several years, in an effort to align with the protections afforded to employees under the National Labor Relations Act (“NLRA”), the National Labor Relations Board (“NLRB”) has opposed restrictive covenants. By way of background, in May 2023, the General Counsel to the NLRB issued [Memorandum GC 23-08](#), highlighting the status of restrictive covenants under the NLRA. The memo maintains that non-compete agreements (and many non-solicitation agreements), with few exceptions, should be deemed unlawful because they have the power to “chill” employees from engaging in activities protected under Section 7 of the NLRA, which guarantees employees certain rights, including the right to organize, bargain collectively and participate in other concerted activities for mutual aid or protection.

Recent developments demonstrate the NLRB’s **increased intolerance** for several types of restrictive covenants, including non-compete and non-solicitation agreements, both of which limit employees’ rights under the NLRA. In [J.O. Mory, Inc.](#), the administrative law judge (“ALJ”) found non-compete and non-solicitation provisions in an employee’s contract were unlawful for employees who did not hold supervisory or management positions. The ALJ ruled that, as drafted, the restrictive covenants were overly broad and could chill employees from engaging in protected activities. While the ALJ did not conclude that all restrictive covenants are unlawful, in this instance, the employer was ordered to rescind the provisions and notify employees the restrictive covenants were no longer enforceable. As of the publication of this blog, the decision remains pending on appeal.

The takeaway for employers is that these developments signal that the NLRB is becoming more intolerant of non-compete and non-solicitation agreements. Now is an opportune time to review and potentially revamp any restrictive covenants to ensure consistency with the latest trends in employment law. If you have questions or would like assistance reviewing your company’s restrictive covenants, you can contact [Meghan Chrisner-Keefe](#) or any member of the [Wilentz Employment Team](#).

Attorney

- Meghan Chrisner-Keefe

Practice

- Employment Law