

Recent NLRB Decision Significantly Impacts Employee Releases and Separation Agreements

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The National Labor Relations Board recently issued a decision in **McLaren Macomb**, holding that employers may not offer severance agreements that require employees to agree to non-disparagement or confidentiality provisions unless those provisions are narrowly tailored. The Board found that broad non-disparagement and confidentiality provisions impermissibly require employees to waive their Section 7 rights under the National Labor Relations Act. According to the Board, “a severance agreement is unlawful if it precludes an employee from assisting coworkers with workplace issues concerning their employer, and from communicating with others, including a union, and the Board, about his employment.” Currently, this holding is limited to severance agreements, as the Board found that having to agree to them was the only way that the employee could receive payment in connection with the layoff. However, given the Board’s handling of “non-Board” settlements, it is fair to reason that the prohibition may extend to other types of release agreements as well.

This decision in *McLaren Macomb* reverses the Board’s previous precedent in **Baylor University Medical Center** and **IGT d/b/a International Game Technology**, which had held that offering severance agreements with confidentiality provisions was not unlawful by itself.

We recommend not providing any release agreement of any kind without speaking with your Laner Muchin servicing attorney.

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