

Your Non-compete Might Be Illegal: NLRB Turns Up Heat for Rank-and-File Workers

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Michael Schmidt was quoted in the *New Jersey Law Journal* discussing the National Labor Relations Board's memo warning that employment non-compete clauses for nonmanagerial employers are illegal. "The general counsel's memo, by itself, doesn't have the force of law. But it would take effect if the NLRB adopts the position and imposes it on an employer. And it won't be clear for a while if these efforts at the NLRB and FTC will succeed in doing away with non-competes," said Mike. He believes employers should take the memo as a signal that it's time to examine their use of non-compete clauses. "The reality is even on the state and local level, there is certainly a discernible trend toward limiting the enforceability of non-compete agreements, especially broad ones, and especially with rank-and-file employees. This is a good opportunity to look at the extent to which you are using non-compete agreements, and doing one of two things if you do use one. Think about whether to add any kind of disclaimer language—for example, that this agreement does not seek to prevent employees from engaging in activity that is protected under the National Labor Relations Act, something like that. [It's] not clear that that would save the day, but [it] might be helpful going forward," he said.

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