

Broad Non-Disparagement Agreements Now in Question

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Employers using non-disparagement agreements could be under scrutiny after some recent guidance from the National Labor Relations Board.

In a new guidance memo, the NLRB's Division of Advice concluded that a Missouri law firm violated federal labor law by requiring employees, who it later sued for posting negative job reviews on Glassdoor and other websites, to sign a broad non-disparagement agreement.

The advice memorandum released last month (but written in March 2019) stated that the law firm's agreement barring employees from "criticizing, ridiculing or disparaging" the firm could impede on their rights to organize under the National Labor Relations Act (NLRA). Interestingly, the advice memo said the anonymous online job reviews did not qualify as concerted activity that is protected by the law. The memo advised an NLRB regional director in St. Louis to issue a complaint accusing the law firm for violating the NLRA, which it did a few weeks later. The advice memo said the law firm's allegations filed against 10 unidentified former employees in a 2017 lawsuit were preempted by the issuance of a complaint. The law firm and the former employees settled the NLRB case and the firm's lawsuit in October on undisclosed terms. The board does not release advice memos until the underlying case is resolved.

The law firm accused the former employees of breaching non-disparagement agreements they had signed when they were hired by posting negative reviews on Glassdoor, Indeed, Avvo and other job websites. One of the former employees then filed a charge with the NLRB last year claiming the agreement was overly broad and that the lawsuit was a form of unlawful retaliation against the workers for exercising their rights under the NLRA.

Employers should learn from this that even though negative reviews could hurt your business if you rely on your online reputation to advertise for clients, you still cannot require your employees to sign broad agreements which interfere with employee rights under the NLRA.

If you have any questions about this guidance memo and how it could affect your business, please [reach out to me](#) or any member of the [Barley Snyder Employment Practice Group](#).