
NLRB General Counsel Issues Memorandum Asserting Non-Competes Violate the National Labor Relations Act Except in Limited Circumstances

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On May 30, 2023, the General Counsel of the National Labor Relations Board (“NLRB”) issued [Memorandum GC 23-08](#) (the “Memorandum”), which articulated the General Counsel’s position that, except in limited circumstances, the proffer, maintenance and enforcement of non-compete agreements with non-management employees violate the National Labor Relations Act (“NLRA”). The Memorandum itself is not binding precedent unless its reasoning is subsequently adopted by the NLRB in a decision. However, the Memorandum demonstrates the General Counsel’s view that non-competes violate covered employees’ rights under Section 7 of the NLRA, which generally encompasses an employee’s ability to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and puts employers on notice that continuing to enter into non-competes (and enforcing existing non-competes) with non-management employees could constitute an unfair labor practice.

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