

## NLRB General Counsel Wants to Prohibit Most Non-Competes: Will the Board And The Courts Agree?

By Morris Hawk

On May 30th, the NLRB General Counsel issued a [memorandum](#) asserting that most non-compete agreements for non-supervisory employees violate federal labor law. Specifically, GC Abruzzo expressed her view that non-compete agreements unlawfully interfere with employees' Section 7 rights because they deny employees the ability to quit their current jobs to take other jobs that they are qualified to perform. GC Abruzzo believes that this restriction on job mobility chills employees from engaging in protected, concerted activity such as: 1) threatening to resign in order to improve working conditions; 2) seeking or accepting employment from a competitor as a way to obtain better working conditions from their current employer; or 3) soliciting fellow employees to join a competitor as part of a broader course of protected activity. It is important to note that all non-supervisory employees, regardless of union status, are protected by Section 7.

While GC Abruzzo recognizes that "narrowly tailored" non-competes may be enforceable (for example, to restrict an employee from quitting and establishing a competing business), she asserts that the majority of non-competes are imposed on low-wage and middle-wage workers who lack access to trade secrets or other protectible interests and violate these workers' Section 7 rights.

It is important to note that GC Abruzzo's memorandum does not change the law. Only the National Labor Relations Board can do that. GC Abruzzo will need to bring a case before the Board involving a non-compete agreement and convince the Board to adopt her new theory. And even if the Board does so, the Courts of Appeal may determine on appeal that the Board cannot enforce a broad prohibition on non-compete agreements. That being said, GC Abruzzo's memorandum represents her "ask" to the Board. And so far during her tenure, the Board has given her what she has asked for.

If you have any questions or concerns, please contact any of the listed attorneys.

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