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NLRB Regional Director Targets No-Poach Agreements in Latest Complaint

Labor Relations Update on **September 17, 2024**

On September 12, 2024, the Regional Director for Region 22 (Newark) filed a complaint against Planned Companies, a building maintenance and services provider based in New Jersey alleging that its use of no-poach agreements with its clients violates Section 8(a)(1) and 8(a)(3) of the National Labor Relations Act (the "Act").

The no-poach agreements at issue prevented Planned Companies' building clients from soliciting or hiring Planned Companies' employees for a six-month period following termination of a building services agreement. The no-poach agreements also prohibited any successor building servicer from soliciting or hiring Planned Companies' employees for six months following termination of the relevant agreement.

Region 22 Regional Director Suzanne Sullivan stated: "Planned Companies' prohibition, which in effect interferes with employees' ability to be re-hired to do work in the building in which they are currently working, creates an obstacle to the current and future exercise of employee rights and hinders future bargaining." The National Labor Relations Board's ("NLRB") Office of Public Affairs also published a statement regarding the complaint which is available here.

The decision to target a no-poach agreement is not a surprise given the NLRB's recent stance on restrictive covenants. As we previously reported here, NLRB General Counsel Jennifer Abruzzo issued a memorandum in May 2023 stating her position that non-compete agreements chill employees from engaging in Section 7 activity. As we also previously reported here, the Regional Director for Region 9 (Cincinnati) filed a consolidated complaint against another employer accusing it of violating Section 8(a)(1) by seeking to enforce a non-compete provision. The Region 9 Regional Director later approved a settlement of that matter. Likewise, an administrative law judge ruled in June 2024 that a company's non-compete and non-solicitation policies violated the Act.

The NLRB is not alone in its efforts to target what it views as the anticompetitive effects of restrictions on worker mobility. Indeed, the agency has entered into memoranda of understanding with the Federal Trade Commission, the Department of Justice's Antitrust Division, and the Consumer Financial Protection Bureau to coordinate on these efforts.

A hearing before an administrative law judge in the Planned Companies matter is scheduled for November 12, 2024. As always, we will closely monitor this matter and provide updates as developments occur.

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Related Professionals

- **Joshua S. Fox**
  Partner