

# SETTLEMENT AGREEMENT TERMS: YES, NO, MAYBE SO

UT Law CLE's 2023  
30th ANNUAL LABOR & EMPLOYMENT LAW CONFERENCE  
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## So, you have

- CONSULTED WITH THE POTENTIAL NEW CLIENT
- SIGNED THEM UP
- FILED SUIT OR AN ANSWER
- FILED AND/OR RESPONDED TO MOTIONS
- AGREED TO MEDIATE
- SENT OUT YOUR MEDIATION TERMS AND CONDITIONS
- MEDIATED UNTIL WELL AFTER 6 P.M.
- REACHED AN ORAL AGREEMENT

## Is it time to breathe?

- YES, NO, OR MAYBE SO?



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# NO!!!

## YOUR ADVOCACY CONTINUES

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### FREEDOM FROM NON-DISPARAGEMENT & CONFIDENTIALITY

THE NLRB ISSUED A DECISION  
RE: SEVERANCE AGREEMENTS  
INVOLVING LAID-OFF, NON-  
MANAGEMENT EMPLOYEES

#### YES

- if narrowly tailored to protect proprietary or trade secret information for a period of time
- irrespective of union status
- retroactive

#### NO

- broad non-disparagement & confidentiality provisions
- cannot restrict employees from assisting coworkers with workplace issues

#### MAYBE

- broad releases and cooperation clauses may be next

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# NON-DISPARAGEMENT CLAUSES

## ✓ YES

- EXCEPTIONS:
  - ❖ BREACHES BY EITHER
  - ❖ NECESSARY TO RESPOND TO PROSPECTIVE EMPLOYERS' INQUIRY
  - ❖ AS REQUIRED BY LAW
  - ❖ COMMUNICATING WITH GOVERNMENTAL AGENCIES
- DEFINE KEY TERMS E.G., DISPARAGE, RIDICULE

## ⊘ NO

- ONE SIDED
  - ❖ Mutual instead
  - ❖ Employers bound as to specifically named current employees
  - ❖ Employees bound as to specifically named employee/plaintiff

## 🧠 MAYBE

- LIMIT TO DEFAMATORY REMARKS ONLY

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# CONFIDENTIALITY PROVISIONS

## 1/3 OF AMERICAN WORKERS BOUND TO NDA RESPONSE: SPEAK OUT ACT

- Pre-dispute Nondisclosure and Non-disparagement clauses involving sexual harassment or sexual assault now unenforceable
- Applies to any claim filed after December 7, 2022 despite date NDA signed
- Unclear if covers independent contractors
- Expressly gives states the freedom to pass more restrictive laws
- Employers urged to review their pre-hire, employment, and independent contractor agreements, confidentiality, arbitration and standard separation agreements, handbooks, and policies to ensure compliance with federal and state laws.



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Title search: Settlement Agreements: Yes, No, Maybe So

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30<sup>th</sup> Annual Labor and Employment Law Conference session  
"Settlement Agreements: Yes, No, Maybe So"