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Noncompetition Agreements

Noncompete Agreement Fast-Food Franchiser Requires Hourly Workers to Sign Provokes Ire

Fast-food franchiser Jimmy John's requirement that hourly employees in 44 states and the District of Columbia sign a confidentiality and noncompetition agreement as a condition of employment with it or its franchisees has prompted 37 members of Congress to request that the Labor Department and Federal Trade Commission investigate the policy.

"This hiring practice is clearly anti-competitive and intimidating workers," the lawmakers said in an Oct. 22 letter to FTC Chairwoman Edith Ramirez and DOL Secretary Thomas Perez about the Champaign, Ill.-based Jimmy John's Franchise LLC. Jimmy John Liautaud founded the business in 1983, according to the company's website, and it currently operates 2,000 stores nationwide.

Reps. Joe Crowley (D-N.Y.), vice chair of the House Democratic Caucus, and Linda Sánchez (D-Calif.), co-founder and co-chair of the Labor and Working Families Caucus, wrote the letter, which they and 35 other Congress members—all Democrats—signed. It also stated that the company's alleged use of such an agreement with its rank-and-file employees was "inconsistent with trade and labor laws."

'Bullying Under Color of Law' Alleged. "Non-competition agreements may sometimes make sense for well-compensated core company leadership, who are privy to company secrets and strategies," the lawmakers said. "However, applying them to a company's entire workforce looks more like bullying under color of law, as well as a violation of labor rights."

Representatives for Jimmy John's were unavailable to comment.

Attorney Matthew Disbrow of Jackson Lewis PC in Detroit, and a spokesman for JS Fort Group Inc., told Bloomberg BNA Oct. 23 the company has no comment.

JS Fort Group, a franchisee of Jimmy John's Enterprises Inc., is one of 11 defendants listed in an amended class-action complaint in which the agreement is mentioned. Two of the company's employees filed the amended complaint Sept. 19 in the U.S. District Court for the Northern District of Illinois.

Legal Battle Also Involves FLSA Complaints. In the original class-action complaint, filed July 18 in the U.S. District Court for the Northern District of Illinois, Emily Brunner contends that Jimmy John's Enterprises Inc. and JS Fort Group owe her and other similarly situated

individuals additional wages and overtime compensation because they were misclassified as "exempt" employees under the Fair Labor Standards Act and state wage laws. The employees work or worked as assistant store managers.

Brunner works at a Jimmy John's restaurant in Downers Grove, Ill.

In the amended complaint, Brunner and Caitlin Turowski, a former employee of the fast-food restaurant, allege that Jimmy John's Enterprises and 10 other defendants violated the FLSA and state wage laws and also required workers to sign "an unreasonable and overly broad Confidentiality and Non-Competition Agreement."

Turowski, who no longer works for the company, held positions there as an assistant store manager and a delivery driver.

Agreement Limits Job Options for Two Years. The three-page confidentiality and noncompetition agreement stipulates that workers agree during their employment with the company, and for two years after leaving it, that they:

"will not have any direct or indirect interest or perform services for (whether as an owner, partner, investor, director, officer, representative, manager, employee, principal, agent, advisor, or consultant) any business which derives more than [10 percent] of its revenue from selling submarine, hero-type, deli-style, pita and/or wrapped or rolled sandwiches and which is located within three (3) miles of either" the restaurant where they were employed or any other Jimmy John's sandwich shop "operated by JJF, one of its authorized franchisees, or any of JJF's affiliates."

"Effectively, this agreement requires employees to accept unfair wages because if they stop working for Defendants, their options for new employment is subject to outrageously broad restrictions," the complaint states.

Kathleen Currie Chavez, the plaintiffs' lead attorney, told Bloomberg BNA Oct. 24, "We're asking the judge to look at this agreement and to declare it unenforceable, and tell Jimmy John's corporate they can't continue using it."

Chavez is a founding partner of Foote, Mielke, Chavez & O'Neil LLC in Geneva, Ill.

"There are people who follow rules," she said, "and they may say, 'I don't want to break my word so I won't work for a Subway in California if I've worked for a Jimmy John's in Illinois in the last two years.'"

Broad Geographic Restriction Alleged. The amended complaint states that "[t]he practical effect of the geographic restriction is that an employee is restricted from working in an area that is over 6,000 miles large,

at innumerable businesses (i.e., convenience stores, local coffee shops, sandwich shops, snack bars, cafeterias, family restaurants, etc.), in any capacity, for a period of 2 years in 44 different states and the District of Columbia.”

In a blog posting Oct. 15 about the case, attorney Meredith Campbell, co-chair of the employment and labor group at Shulman, Rogers, Gandal, Pordy & Ecker in Potomac, Md., said that, “[t]o be enforceable, a restrictive covenant should be narrowly tailored to protect a legitimate business interest.” Campbell is not involved with Brunner and Turowski’s case.

“The Jimmy John’s lawsuit is a perfect example of why employment lawyers often plead for restraint when their clients want to roll out non-competes and other restrictive covenants,” Campbell said in the blog post. “If you have a tough agreement and you ask all employees

(from high-level execs to your minimum wage worker-bees) to sign, the document probably is worthless. As with all things legal—think before you leap.”

BY RHONDA SMITH

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Text of the Congress members’ letter is available at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9q7shc>; the noncompete agreement at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9q7qyl>; the amended complaint at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9q7r4q>; and the original complaint at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9q7r5h>.