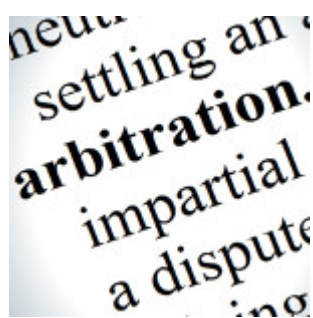


Enforce Arbitration Agreement or Waive Right to Arbitrate Trade Secret Misappropriation Claims



A recent federal court denied an employer's motion to compel arbitration, finding that it waived its right to arbitration by engaging in litigation.

[George L. Kanabe](#), a partner in the San Francisco office of Orrick, Herrington & Sutcliffe LLP, [discusses](#) three key lessons the ruling provides for plaintiff-employers.

Kanabe reports that the ruling noted, "[t]here is no other reasonable interpretation of plaintiff's untimely demand for arbitration than as a deliberate tactic to test the judicial waters but then, when those waters did not flow the direction plaintiff intended, to change routes in hopes of finding a different current."

[Read the article.](#)

Creating Defensible Employment Agreements Before an Employee's First Day



Significant tools in the arsenal of strategies are contracts signed by the employee, but waiting until the employee departs is too late to start thinking about them, points out [Spiwe L. Jefferson](#) in [an article](#) on the website of the Association of Corporate Counsel.

In her article, she discusses contract considerations at the beginning of the employment relationship.

She covers confidentiality agreements and nonsolicitation agreements,. Under the “noncompete agreements” heading, she discusses limiting temporal scope, protecting legitimate interests, exempted professions, timing requirements, consideration, and geographic limits.

[Read the article.](#)

JPMorgan Judge Upends \$1.1 Million Whistle-Blower

Verdict

A U.S. district judge says she saw prejudice in a jury's verdict Tuesday that would have awarded \$1.13 million in damages to a former JPMorgan Chase & Co. employee over her dismissal, according to [Bloomberg](#).

The Manhattan jury deliberated for five hours to find the former wealth manager has been fired illegally. The jury awarded her \$563,000 in back pay and \$563,000 for emotional damage.

Reporter [Bob Van Voris](#) quoted Judge Denise Cote:

“The award of emotional damages says to me that the jury was prejudiced against the bank. That undermines the entire verdict.”

[Read the Bloomberg article.](#)

Can You Really Shut Down Your Company a Week After Your Workers Unionize?

American labor laws normally protect workers from retaliation for unionizing, but billionaire CEO Joe Ricketts seems to have used a dramatic exception when he closed his news websites

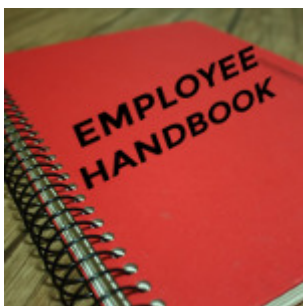
after some workers voted to unionize: A business may always close its operations entirely.

[Francie Diep](#), a reporter for the [Pacific Standard](#), writes that all of the publications' offices – including those in San Francisco, Los Angeles, Chicago and Washington, which had not voted to unionize – are now closed.

“If lawyers decide to pursue a case charging that Ricketts acted illegally, they'll have to prove that some part of the business is still operating – say, if Ricketts were tied to another media company somehow – or that, after the shutdown, Ricketts opened up a similar business elsewhere,” Diep writes.

[Read the Pacific Standard article.](#)

[Tips For Drafting Employee Handbooks: Avoiding Breach of Contract Claims](#)



A [new post](#) on Bryan Cave's At Work blog explains how including certain language in an employee handbook may help an employer to defend breach of contract claims.

“To avoid breach of contract claims premised on employee handbook policies, employers should include an express contract disclaimer in their employee handbooks,” write [Bill Wortel](#) and [Christy Phanthavong](#).

The article explains the “at will” clause, the use of a reservation of right by the employer to modify policies, and the need for the disclaimer to be conspicuous.

[Read the article.](#)

[Billionaire CEO Shuts Down Publications After Vote to Unionize](#)

The CEO of a group of digital local news sites shut down the publications a week after reporters and editors in the combined newsroom of DNAinfo and Gothamist voted to join a union, reports [The New York Times](#).

Joe Ricketts, the billionaire founder of TD Ameritrade, owned the sites.

“For DNAinfo and Gothamist, the staff’s vote to join the Writers Guild of America East was just part of the decision to close the company, write [Andy Newman](#) and [John Leland](#).

“The decision by the editorial team to unionize is simply another competitive obstacle making it harder for the business

to be financially successful,” said a spokeswoman for DNAinfo.

[Read the NYT article.](#)

[How Lawyers Protect the Harvey Weinstein in Your Workplace](#)

In workplace harassment cases – both in Hollywood and in the rest of the American workforce – many companies try to use nondisclosure agreements to protect the employer from legal consequences for wrongdoing, according to [Bloomberg Law](#). And the NDA can also serve to keep criminal behavior out of the public eye and the courts.

That’s how someone like Hollywood producer Harvey Weinstein can be a repeat offender without consequence, explains Bloomberg reporter Rebecca Greenfield.

She quotes Peter Romer-Friedman, an employment lawyer at Outten and Golden: “It’s buying silence. It’s buying confidentiality. It’s trying to sanitize. These agreements are often protecting criminal activity.”

“NDAs are geared to ensure that the fraction of people who do come forward can’t warn others or bring claims to light, all of which contributes to the culture of silence around workplace harassment.

Legal scholars are now asking if settlements backed by nondisclosure pacts are protecting criminal activity," Greenfield writes.

[Read the Bloomberg article.](#)

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[Lawsuit Alleging General Electric Ripped Off Its Workers Shows the Pitfalls of 401\(k\) Plans](#)

A lawsuit recently brought against General Electric Co. raises the question: Can your employer be trusted to manage your retirement fund exclusively for your own benefit?

[Los Angeles Times](#) reporter [Michael Hiltzik](#) explains that the suit alleges that GE managed the plan for its own benefit by loading it with mutual funds owned by its own subsidiary.

"The funds charged high fees while also underperforming the investment markets, a double-barreled drawback that cost employees millions in potential gains," according to Hiltzik.

Plaintiffs claim that a large portion of the funds was invested in GE-owned mutual funds, and the company pocketed the management fees paid by its own employees. All but one of

the five GE funds underperformed its benchmark investment index.

[Read the *LA Times* article.](#)

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[How to Structure Global Mobility Assignments, Expatriate Postings and Cross-Border Secondments](#)



In structuring overseas postings, multinationals inevitably struggle with the interplay between expatriate assignment strategy and the legal ramifications of a particular foreign posting, points out [Donald C. Downing](#), a shareholder in [Littler Mendelson P.C.](#)

“The various types of cross-border personnel moves raise questions of how best to structure a given international assignment,” he writes. “To resolve these questions, we address four threshold issues: (A) who is and is not an expatriate?; (B) four expatriate structures; (C) selecting the best expatriate structure; and (D) written expatriate agreements.”

A link at the end of the article on Littler's website connects to the full report.

[Read the article.](#)

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[NFL Players May Have an Ally in Their Protests: Labor Law](#)

The New York Times [reports](#) that, as National Football League team owners consider President Trump's call to fire players who refuse to stand for the national anthem, they have stumbled into one of the most consequential debates in today's workplace: How far can workers go in banding together to address problems related to their employment?

Reporter [Noam Scheiber](#) writes that, since Trump's call for firing players, their demonstrations now could constitute labor activity that's federally protected, explains Matthew Bodie, a law professor at St. Louis University who is a former attorney for the labor board.

"If they're standing up for other players' rights to kneel in the context of their job and keep their job, it seems to me to be protected concerted activity," Bodie said.

[Read the NYT article.](#)

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[Fox News' General Counsel, Under Legal Siege, Takes Leave From Network](#)

Fox News general counsel Dianne Brandi will take an unspecified leave of absence from the company, in the latest sign of fallout from the network's long-running sexual harassment scandal, reports [The Washington Post](#).

Brandi has been named in four lawsuits filed by former Fox employees or contributors alleging harassment. And a federal investigation into Fox News' financial practices began to focus on her role during the long tenure of its co-founder and former chairman, Roger Ailes, sources told the *Post*. Investigators are looking into payments made under Ailes to employees who had accused him and other executives of harassment or mistreatment.

"Brandi could prove to be a key figure in the investigation because of her long and close association with Ailes, who was ousted from Fox last year amid harassment allegations and died in May," writes reporter [Paul Farhi](#). "She may have direct knowledge of some of his more secretive and allegedly sinister management practices, people who are involved in the investigation said."

[Read the Post article.](#)

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[Will the Supreme Court End Employment Contract Arbitration Clauses?](#)



The validity of arbitration clauses in employment contracts is unclear and is now before the U.S Supreme Court, points out [Mary An Couch](#) in Bradley Arant Boult Cummings LLP's [Labor & Employment Insights](#) blog.

The Supreme Court heard oral argument in *National Labor Relations Board v. Murphy Oil, USA, Inc.* and two other consolidated cases about whether such clauses violate the National Labor Relations Act (which governs employer-employee relations) or whether the Federal Arbitration Act (which governs arbitration agreements) trumps the NLRA, she writes.

The relevant cases being considered are from the 5th Circuit, which found the arbitration clause did not violate the NLRA, and the 7th and 9th circuits, which found similar clauses unenforceable.

[Read the article.](#)

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[Yes, Overtime Laws Apply To Law Firms](#)

A pair of lawsuits allege two Florida law firms failed to pay administrative workers proper overtime wages in compliance with the Fair Labor Standard Act, reports [Above the Law](#).

Reporter [Kathryn Rubino](#) explains: “Brandi Durrett, a case manager, is suing personal injury firm The Disparti Law Group and its founder, Lawrence Disparti over unpaid overtime wages. Jayne Hinkle, an office manager, is making similar claims against The Jodat Law Group and partner Gary Jodat.”

Plaintiffs claim their employers would use various methods to circumvent overtime compensation requirements.

[Read the Above the Law article.](#)

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[CBS Fires Legal Counsel Over Facebook Comments on Vegas Shooting](#)

CBS fired a a senior legal counsel after she criticized some victims of the Las Vegas mass shooting as “Republican gun toters” who did not deserve sympathy, reports [The Washington Post](#).

“Hayley Geftman-Gold, who was a vice president and senior legal counsel at CBS in New York, also wrote on Facebook that she had no hope that Republicans – whom she called ‘Repugs’ – would ever take action and ‘do the right thing’ if they didn’t do anything when children were murdered, an apparent reference to the December 2012 Sandy Hook shooting that left 28 people dead, including 20 children, killed inside their elementary school in Connecticut,” writes [Mary Hui](#).

CBS confirmed firing Geftman-Gold and called her comments on social media “deeply unacceptable.”

[Read the Washington Post article.](#)

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Employment Attorney: NFL Players Can Be Fired For Political Protests

President Donald Trump has a solution to stop football players from taking a knee in protest during NFL games.

“The NFL has all sorts of rules and regulations,” Trump said in a tweet this week. “The only way out for them is to set a rule that you can’t kneel during our National Anthem!”

But can NFL owners really do that? Yes, says noted Dallas employment lawyer [Rogge Dunn](#).

“This is no different than employers prohibiting employees from smoking at the office or outside of the office,” said Dunn, a partner at [Clouse Dunn LLP](#).

As reported on the website of Androvett Legal Media & Marketing, [more than 100 pro football players](#) defiantly knelt or locked arms before games on Sunday and Monday. Many did so following Trump’s harsh criticism at a campaign rally in Alabama late last week. He said in a speech:

“Wouldn’t you love to see one of these NFL owners, when somebody disrespects our flag, to say, ‘Get that son of a bitch off the field right now. Out! He’s fired. He’s fired!’”

While last weekend’s wave of protests were a show of solidarity against President Trump, former [San Francisco 49ers quarterback Colin Kaepernick](#) actually sparked the movement in 2016 by sitting on the bench during the national anthem to put a spotlight on the victimization of African-Americans by police.

Regardless of the cause, Dunn said more employers are

regulating employees' actions inside and outside of work.

"An employer can regulate employees' actions at the office and outside, including limiting their political activities and firing them for speaking out or protesting," he said.

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[Tree Trimming Firm Pays Biggest Fine in U.S. Immigration Case](#)

A tree trimming company has been handed the largest penalty imposed in a United States immigration case, totaling \$95 million, after pleading guilty to employing illegal immigrants, the U.S. Attorney's Office said.

[Reuters reports](#) that Asplundh Tree Experts Co., which trims trees and clears brush for power and gas lines across the country, hired employees who provided fake identification documents from 2010 to 2014, the U.S. Attorney's Office in Philadelphia said.

The prosecutor said the company's managers were "willfully blind" as supervisors and foremen hired illegal immigrants, writes [Brendan O'Brien](#).

[Read the Reuters article.](#)

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[WilmerHale Accidentally Sent Whistleblower Docs to Wall Street Journal](#)



When *The Wall Street Journal* broke a story about the firing of PepsiCo Inc.'s general counsel, the newspaper had some inside information: someone at WilmerHale accidentally sent a privileged memo about the case to the publication.

[Above the Law](#) recounts the story of how the memo, discussing a subpoena whistleblower/GC Maura Smith received, was sent to a group of lawyers – and the *Journal*.

Writer [Joe Patrice](#) speculates that “someone’s inline autocomplete got the better of them.” He also has some tongue-in-cheek advice for WilmerHale: call the whole thing fake news.

[Read the Above the Law article.](#)

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[SEC Probing Pepsi's Former GC After She Claimed She Was Wrongly Ousted](#)

Former general counsel for PepsiCo Inc. Maura Smith is now the focus of an investigation by the SEC after she claimed she was fired in retaliation for the way she handled earlier internal probes concerning allegations of wrongdoing in Russia, according to a report at [TheStreet.com](#).

[The Wall Street Journal](#) originally reported on the investigation.

Smith was Pepsi's general counsel for little more than a year, until June 2012, when she was tasked with overseeing outside lawyers the company hired to investigate business practices with Wimm-Bill-Dann, a Russian dairy product and juice maker Pepsi acquired for \$5 billion in 2011.

[Read TheStreet.com report.](#)

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[BigLaw is Doomed If Clients Refuse to Pay for Associates](#)

Some general counsel are starting to push back against big law firms charging \$400 an hour for the work of associates, writes [Joe Patrice](#) for [Above the Law](#).

Patrice quotes from an Am Law Daily report on a recent summit:

At a Manhattan conference on legal innovation this month, Mark Smolik, the general counsel of DHL Supply Chain Americas, had a message for the law firm representatives in his audience.

“Sorry, law firms. You spend on the training,” Smolik said. “I cannot afford to pay your associates \$325 an hour.”

Smolik warned the group that he could hire those associates himself and “pick them up right out of law school.”

[Read the Above the Law article.](#)

[Biglaw Firm Announces Hundreds Of Buyouts And](#)

Layoffs, Almost 500 Affected



Above the Law [reports](#) that Hogan Lovells recently decided to offer “voluntary retirement” packages to about 400 of its senior business support staff members in the U.S.

[Staci Zaretsky](#) writes that those who have been with the firm for at least five years were offered an out, and it’s expected that 5 to 10 percent of those who received the offer will take it.

“In addition to the hundreds of voluntary buyouts Hogan Lovells is offering to business staff members here in America, the firm is set to cut up to 90 jobs in London thanks to a recent restructuring,” Zaretsky adds.

[Read the Above the Law article.](#)

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