

# I Can't Make Sandwiches: I Worked at Jimmy John's. Why Do We Care?

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Sandwich chain **Jimmy John's** has garnered unwanted press recently over its **franchisees' use of non-competition agreements with delivery drivers and employees who make sandwiches**. About two weeks ago, the [Huffington Post reported](#) that Jimmy John's was facing a class action lawsuit based on its use of non-compete agreements with rank-and-file employees. The backlash on the internet has continued (see [follow-up report at the Huffington Post](#)).

Surprisingly, the company's use of these agreements has also caught the attention of certain members of Congress, led by Representatives **Joe Crowley** (D-New York) and **Linda Sánchez** (D-California). In a [letter to the United States Department of Labor \(DOL\) and the Federal Trade Commission \(FTC\)](#), Representatives Crowley and Sánchez, joined by 35 others, ask these two agencies to investigate whether Jimmy John's use of these agreements is contrary to federal law. The DOL and the FTC are considering the Representatives' request.

The [agreement at issue](#) is a fairly typical **restrictive covenant agreement**. The agreement prohibits the employee from working for a competing business for two years after his/her employment with Jimmy John's ends. The restriction applies to any business that derives more than 10 percent of its revenue from sandwich sales (it is hard to imagine how a job applicant would know that information to begin with) if that business is located within three miles of the Jimmy John's location at which the employee worked or any other Jimmy John's location.

The concern expressed by Representatives Crowley and Sánchez revolves around the application of the agreement to low-wage employees. They claim that the agreement is not based on a legitimate business interest, intimidates these employees, and negatively impacts their ability to look for other work.

The unwanted attention for Jimmy John's serves as a good reminder that all employers, regardless of the state in which they operate, need to carefully consider what employee positions should be subject to non-competition agreements. The importance of having a legitimate business interest to justify the agreements, as well as the scope of the restrictions, cannot be overstated. Think about it.

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