CLIENT ALERTS & INSIGHTS

No Love Lost: Acting National Labor Relations Board General Counsel Rescinds Litany of Former GC Abruzzo's Policy Memoranda in Valentine's Day Shakeup

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Signaling a strong shift away from the policy positions of the former administration, Acting National Labor Relations Board ("NLRB") General Counsel William Cowen issued a GC Memorandum on February 14, 2025, rescinding 31 GC memos issued by his predecessors since 2021, either permanently (18) or "pending further guidance" (13). Most of the rescinded GC memos were issued by former NLRB General Counsel Jennifer Abruzzo, who was expectedly ousted on January 27.

During her tenure, former GC Abruzzo frequently issued employee-friendly memos on a host of issues, including opposing captive audience meetings, clamping down on employer surveillance, and expressing her perception of the legality of non-compete agreements and pay-or-stay provisions (for example, see alerts here and here). The memos, issued by the NLRB's top prosecutor, signal the agency's policy and enforcement priorities, and impact agency staff's interpretation of their role in carrying out the agency's objectives. Under Abruzzo, Regional Directors evaluated and acted on unfair labor practice claims as directed by the memos instead of the binding law and NLRB precedent.

The list of GC memos rescinded by Acting GC Cowen runs the gamut. Notably, that list includes a 2022 memo issued by then-GC Abruzzo taking the position that captive audience meetings violate the National Labor Relations Act ("NLRA"). Despite the 2022 memo having been rescinded, the NLRB's 2024 decision deeming the meetings unlawful in *Amazon Services LLC*, 373 NLRB No. 136, remains the current legal precedent. However, Acting GC Cowen's rescission of the memo signals that quashing captive audience meetings may not be at the top of the Board's enforcement priority list, and may signal a reexamination of the issue down the line-particularly given that the NLRA's plain language explicitly authorized captive audience meetings for over 75 years before the *Amazon* decision was handed down.

Other noteworthy rescinded memos include:

- A 2021 memo asserting that student-athletes should be considered employees with the right to unionize and the related trappings provided for under the NLRA;
- A 2023 memo deeming non-compete agreements to run afoul of the NLRA "[e]xcept in limited circumstances";

- A 2024 memo likewise construing "pay-or-stay" provisions violate employees' rights under the NLRA;
- A series of memos issued between 2021 and 2025 addressing the circumstances under which the Board should seek injunctive relief with respect to allegations of unfair labor practices; and
- An early 2021 memo, issued by then-Acting General Counsel Peter Sung Ohr, rescinding a series of GC memos issued under the first Trump administration.

What this Means for Employers

Acting GC Cowen's rescission of these memos does not itself amount to a change in the law. However, these rescissions signal a marked shift in the Board's policy, and suggest that the Board's enforcement priorities will continue shifting in a less pro-union direction as the second Trump administration takes shape. Under new leadership, NLRB and Regional Director enforcement should adjust and change quickly to realign with established and binding law.

We will continue to monitor the Board's policy shifts for additional developments impacting employers of union and non-union employees alike. If you have any questions, please contact an attorney in Benesch's Labor & Employment Practice Group.

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