

ACTING NLRB COUNSEL ROLLS BACK MANY BIDEN-ERA LABOR MEMOS AND BEGINS PROCESS OF CHANGING U.S. LABOR LAWS: WHAT EMPLOYERS NEED TO KNOW

Insights
Feb 18, 2025

The Acting General Counsel of the National Labor Relations Board just signaled a new policy direction for labor law under the Trump administration by rescinding more than a dozen policies endorsed by previous leadership. William Cowen's February 14 General Counsel Memorandum 25-05 rolled back multiple policies issued by the previous NLRB General Counsel, including positions on the legality of non-competition agreements and stay-or-pay provisions, whether college athletes should be considered employees, and more. What do you need to know about this development and what should you do about this change?

What are General Counsel Memos?

While GC memos are not binding law, they act to inform Regional offices of the GC's priorities in enforcing the National Labor Relations Act. The memos are valuable resources for employers, unions, and employees to understand the current policies of the NLRB and how particular issues will be enforced.

The previous NLRB GC, Jennifer Abruzzo, issued multiple memos that shifted Board policy towards increasing union membership, limiting employer free speech rights to lawfully communicate with employees, a more aggressive view of enforcement of the Act, and a more expansive view of protected, concerted activity. Many of General Counsel Abruzzo's memos resulted in Board decisions that modified or reversed previous Board law.

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What Did Acting General Counsel Cowen's Memo Do?

In his first action as Acting General Counsel, Cowen made it clear the new administration will not actively pursue a number of the expansive and novel interpretations of federal labor law espoused by the previous GC. [You can read GC 25-05 here.](#)

Overall, GC Cowen's memo impacted 31 prior GC memos issued between 2021 and 2025 (yes, some of these were hurriedly issued in January prior to the presidential inauguration). Some of the most impactful memos that are no longer in effect include:

- [Contending that most non-competition agreements violate federal labor law](#)
- [Prohibiting "stay or pay" provisions](#)
- [Characterizing student-athletes as employees](#)

How Does This Memo Impact Recent NLRB Decisions?

By rescinding previous GC guidance, the new GC is also signaling what is expected to be a different approach by the Board regarding significant legal issues. For example, the memo rescinds prior GC guidance related to more recent NLRB decisions that changed long-standing labor law including:

- [Whether offering overly broad severance agreements violates the NLRA](#) (*McLaren Macomb*, 372 NLRB No. 58)
- [Whether employers can hold "captive audience" speeches](#) (*com Services LLC*, 373 NLRB NO. 136)
- [Expanded scope of demands for recognition and issuing of bargaining order remedies](#) (*Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130)

Significantly, the GC Cowen's memo does not reverse the current application of these recent decisions, but it does indicate the new NLRB may view the rule of labor law differently.

Why Did New NLRB Leadership Do This?

Acting GC Cowen's memo cites the Board's current caseload as the basis for rescinding the policies. "The unfortunate

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truth is that if we attempt to accomplish everything, we risk accomplishing nothing," he said. While efficient case management maybe a goal, it seems the new NLRB will have a much different position on critical issues compared to its predecessor.

What Happens Next?

In light of this memo, employers should expect the new Acting GC to take a different approach to Board law that affects both union and non-union employees. That said, change occurs slowly at the NLRB. This memo is not binding law, and it will take time for the NLRB itself to potentially reverse precedent that was set during the Biden administration. With the Board currently not having a quorum, it could be some time until employers see significant legal changes. But this memo does demonstrate that the Biden era policies are being rejected.

What Should Employers Do Now?

Acting General Counsel Cowen's memo sets the stage for a new labor policy under the Trump Labor Board.

- Employers should **monitor further updates**, as a mandatory referral memo is expected soon that will provide guidance on Board decisions that may be overturned. The best way to stay tuned is subscribe to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox.
- In the short term, employers that were evaluating or modifying "**stay to play**" agreements that required employees to pay back certain benefits provided by employers when employees left can now revert to their previous agreements, subject to state law.
- Also, as a result of this memo, Regional Board offices will no longer evaluate the legality of **non-compete agreements**, so employers with such restrictive covenants (or those considering re-establishing such covenants) should consult with counsel to determine your next steps.
- From a practical standpoint, employers with **matters pending before an NLRB Regional office** may see increased efforts to settle. Depending on the matter, this may or may not be a positive opportunity now. For

example, this new GC memo should impact the types of remedies being sought by the NLRB Regions.

Conclusion

The rescission of Biden-era GC memos was expected, and more changes will be coming soon to Board law. We will continue to monitor these developments and their impact on employers, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox. If you have any questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Labor Relations Group](#).