FP Snapshot for Manufacturers: New Administration Rolls Back Biden-Era Labor Law Policy

Insights
3.31.25

Welcome to this edition of the FP Snapshot on the Manufacturing Industry, where we take a quick snapshot look at a recent significant workplace law development with an emphasis on how it impacts employers in the Manufacturing sector. This edition is devoted to a recent National Labor Relations Board (NLRB) Memorandum that signals a significant shift in labor law policy and rolls back more than a dozen policy initiatives endorsed by the previous administration. This development will have wide-ranging impacts for employers in the manufacturing space, so read on to find out what you need to do as a result.

Acting GC Rescinds Several Aggressive Biden-Era Policy Initiatives

On February 14, NLRB Acting General Counsel William Cowen issued General Counsel Memorandum 25-05, rolling back in one fell swoop more than a dozen pro-labor policy endorsements touted by former General Counsel Jennifer Abruzzo (a Biden appointee). This includes rescinding the NLRB's positions:

- that most non-compete agreements violate the National Labor Relations Act;
- on drastically expanding the types of remedies that can be sought by the NLRB; and
- invalidating most "stay or pay" agreements.

You can read a detailed summary about this development here.

Manufacturing Employers Can Exhale – Just Don't Fully Deflate

Acting GC Cowen's rollback of these aggressive pro-labor policy initiatives is the first demonstration of what we expect will be a broader shift toward a more objective national labor law policy. The rollback of these memos signals a rejection of the "gotcha" enforcement style that left employers scrambling to anticipate new and novel interpretations of the law, although it should be noted that when it comes to issues involving recent expansion of the agency's remedial framework, the underlying NLRB decisions will remain intact at least until such time as they are overturned by a reconstituted Republican majority. In the meantime, they will be of special interest to manufacturers for a few reasons:

Restored Protection of Concerts and Relationships

Restored Protection of Concepts and Relationships

For instance, manufacturers rely heavily on protecting proprietary processes, trade secrets, and customer relationships. Policy initiatives and enforcement actions by the previous administration often created a chilling effect on manufacturers' ability and desire to enforce their agreements with employees. This jeopardized their ability to safeguard these important assets. The shift by the new administration should help to restore the ability of manufacturers to protect such concepts.

Reduced Danger of Expanded Remedies

Manufacturers were also disproportionately impacted by the "expanded remedies" sought under the prior administration. Highly sensitive to supply chain disruptions and fluctuating market demands, which often require rapid adjustments to workforce size, the burden and uncertainty of the expanded remedies cost manufacturing employers some much-needed flexibility in operations. By returning remedy recovery to its traditional scope, manufacturers will regain their ability to stay nimble. Manufacturers should note, however, that a full return to this remedial framework will require overturning the Board's 2022 decision in *Thryv, Inc.*, which drastically expanded traditional remedies. Thus, while GC Memo 25-05 signals a shift in enforcement away from this drastic expansion, it will take an act of the Board to undo *Thryv, Inc.* and fully eradicate this era of dramatically expanded "remedies." Thankfully on that point, Republican-appointed NLRB Chairman Kaplan has already signaled that he believes *Thryv, Inc.* is no longer controlling precedent.

Elimination of Stay-or-Pay Prohibition

Manufacturers also spend significant resources training workers to operate complex machinery or implement specialized processes. The prior invalidation of most "stay or pay" agreements made it difficult to secure a return on these investments. An elimination of this ban will be quite useful when it comes to talent acquisition and retention.

Thankfully, GC Memo 25-05 suggests manufacturers will be free of these significant restraints. This development also seemingly telegraphs a more predictable and balanced approach, where employers stand a more reasonable chance of resolving issues without facing overly harsh consequences or the uncertainty of being on the receiving end of a novel enforcement action. This doesn't eliminate enforcement altogether, but it offers employers a bit more breathing room when navigating labor law obligations. So, exhale – just don't fully deflate.

What Should Manufacturers Do Now?

Manufacturers should use this upcoming period of (likely) regulatory stability to reinforce and improve upon communication with employees. Create or refine channels that allow workers to voice concerns, suggest improvements, or raise safety issues without fear of retaliation. Many of the issues that ultimately end up before the NLRB can be prevented if employees feel heard and valued. Clear, proactive communication builds trust, reduces turnover, and minimizes the risk of issues escalating into legal challenges.

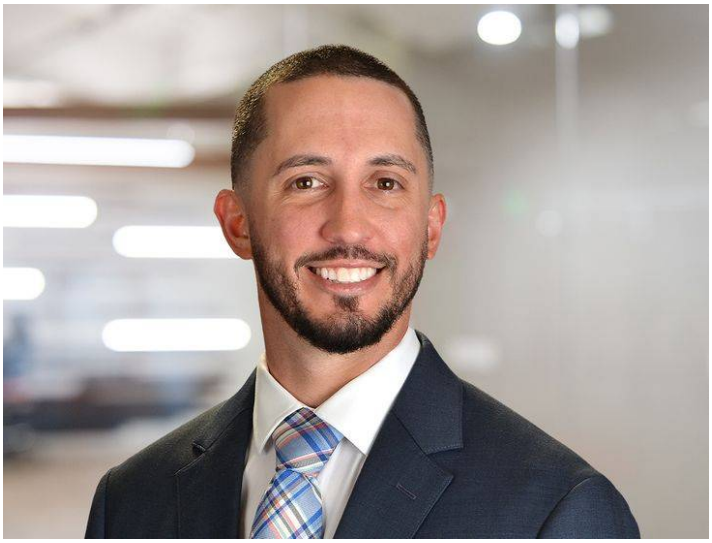
This is particularly important when it comes to safety, an issue that dominates manufacturing more so than most other industries. Now is a perfect time to roll out policies and procedures that balance robust safety measures with flexibility that allows employees to express concerns without fear of reprisal.

And for those manufacturers that revised or even eliminated their restrictive covenant agreements/policies or their stay-or-pay policies, it's likely safe (from a federal labor law perspective) to bring a modified version of those back to life. Work with experienced labor counsel to set yourself up for success.

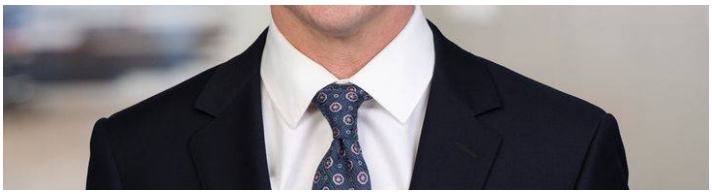
Want More?

We will continue monitoring workplace law developments as they apply to manufacturers, so make sure you are subscribed to Fisher Phillips' Insight System to have the most up-to-date information sent directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Manufacturing Industry Team.

Related People



Alex G. Desrosiers
Partner
407.541.0857
Email



Christopher M. Champine
Associate
858.597.0278
Email

Service Focus

Labor Relations

Industry Focus

Manufacturing