

Prosecutorial Reset: NLRB Acting General Counsel Rescinds Biden Guidance Memoranda En Masse

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Not waiting for the appointment of a new General Counsel after President Trump's discharge of both the previous General Counsel and then Acting General and suggesting that his motivation related to the workload of the Agency, on February 14, 2025, National Labor Relations Board's current Acting General Counsel William B. Cowen rescinded nearly all of the Biden administration General Counsel's substantive prosecutorial guidance memos.

While these memoranda do not have the weight of law or regulation, they do set out the agency's priorities and key interpretations of the National Labor Relations Act. As a result, it marks a (not unexpected) complete reversal of the prosecutorial focus of the Office of the General Counsel from General Counsel Abruzzo's tenure.

There were generally two types of rescissions. Some of the memos were rescinded in full, while others were rescinded "pending further guidance" – suggesting those areas where the new administration will be placing its focus.

The Acting GC's memorandum did not address the impact of the NLRB's current lack of a quorum on the Acting GC's prosecutorial agenda. President Trump's unprecedented firing of former NLRB Chair Gwynne Wilcox, which deprived the NLRB of a quorum, is [currently being litigated](#).

The list of key rescinded memoranda and their policy impact are summarized below.

Abruzzo GC Memoranda Rescinded in Full

Rescinded General Counsel Memoranda
[**Memorandum GC 21-01**](#)

[**Memorandum GC 21-02**](#)

Topic and Relevant Policy

Offered guidance on mail-ballot elections, because "COVID-19 is no longer a Federal Public Health Emergency".

Rescinded prior memos, including those that

[Memorandum GC 21-03](#)

provided guidance on employment handbook rules, decertification petitions, and duty of fair representation cases, among other things. Advocated greater enforcement of Section 7 rights regarding workplace health and safety in light of COVID-19.

[Memorandum GC 21-08](#)

Endorsed [prosecuting universities that did not classify student-athletes as employees](#) under the NLRA.

[Memorandum GC 22-06](#)

Offered an [update on NLRB regional offices seeking broader remedies](#) when prosecuting unfair labor practices (e.g., consequential damages, employer letters of apology).

[Memorandum GC 23-02](#)

Advocated [prosecuting employers who used AI and algorithms](#) in a way that could chill employee Section 7 activity.

[Memorandum GC 23-05](#)

Endorsed [prosecuting employers that imposed on employees broadly worded severance agreements](#) with expansive non-disparagement and confidentiality clauses.

[Memorandum GC 23-08](#)

Advocated [prosecuting employers that imposed on employees noncompetition agreements](#) outside limited cases.

[Memorandum GC 24-04](#)

Supported [seeking full remedies \(e.g., increased healthcare costs, lost pension contributions\) for employees in unfair labor practice charge settlements](#) with employers.

[Memorandum GC 24-05](#)

Proposed [continuing to seek Section 10\(j\) injunctive relief against employers](#) despite the higher procedural bar set by the Supreme Court in *Starbucks Corp. v. McKinney*.

[Memorandum GC 25-01](#)

Advocated [prosecuting employers who imposed on employees stay-or-pay provisions](#) (e.g., training repayment agreement provisions, quit fees, sign-on bonuses).

Abruzzo Memoranda Rescinded – Pending Further Guidance

Rescinded General Counsel Memoranda
[Memorandum GC 21-05](#)

Topic and Relevant Policy

Advocated Board prosecutors seek Section 10(j) injunctive relief to protect Section 7 rights from “remedial failure due to the passage of time.”

[Memorandum GC 21-06](#)

Endorsed [NLRB regional offices seeking a “full panoply” of make-whole remedies](#), including “consequential damages to make employees whole for economic losses (apart from the loss of pay or benefits)”, such as credit card late fees or higher healthcare costs, in unfair labor practice cases.

[Memorandum GC 21-07](#)

Proposed Board prosecutors seek expanded

remedies in formal and informal settlements, including consequential damages, front pay, and work authorization sponsorship for immigrant workers, employer letters of apology, among others.

Memorandum GC 22-01

Supported ensuring that immigrant workers' Section 7 rights were protected, including by NLRB regional offices pursuing deferred action, parole, and a stay of removal, among other things, when immigrants allege they suffered unfair labor practices.

Memorandum GC 22-02

Endorsed NLRB regional offices seeking Section 10(j) injunctive relief in response to employers allegedly committing unfair labor practices during union organizing campaigns.

Memorandum GC 24-01

Offered guidance to Board prosecutors seeking a *Cemex* bargaining order against employers that allegedly fail to recognize and bargain with unions.

Memorandum GC 25-04

Provided insight on the interaction between federal anti-discrimination and labor law, including in cases where an employee engages in Section 7 activity that may be discriminatory.

As always, we will continue to monitor developments related to the Board and provide updates as they develop.

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