

Biden Administration Labor Law Initiatives Swept Away

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In a widely expected move, Acting National Labor Relations Board (“NLRB”) General Counsel William Cohen rescinded a range of Biden Administration labor-law policies, including high-profile directives that targeted non-competition agreements as unlawful under the National Labor Relations Act (“NLRA”) and that increased the financial penalties that could be imposed on employers accused of violating the NLRA.

Employers with union and non-union workplaces alike should take note, as the changes will have an immediate impact on how NLRB regional offices investigate and prosecute unfair labor practice charges filed by individuals and unions.

Cohen took the action in a February 14, 2025, memorandum to NLRB regional offices in which he rescinded a series of memoranda issued by the NLRB’s prior General Counsel, Jennifer Abruzzo. Abruzzo had been appointed to the position by President Biden and confirmed by the Senate in 2021; Cohen was appointed to the acting position by President Trump on February 3, 2025, after President Trump fired Abruzzo.

Cohen’s memorandum will have an immediate impact in several enforcement areas:

- **It is no longer NLRB policy that non-compete agreements violate the NLRA.**
 - General Counsel Abruzzo had targeted non-compete agreements in a memorandum to regional offices in May 2023, taking the position that, among other things, non-compete agreements undermined employees’ ability to threaten to resign in order to advocate for workplace changes—and so violated their right under the NLRA to take collective action to improve their working conditions.
 - Abruzzo’s enforcement policy came as state lawmakers across the United States and other Biden Administration agencies were taking action to limit or prohibit non-compete agreements.
 - Cohen’s action effectively means if a regional office receives an unfair labor practice charge alleging that a non-compete agreement is unlawful, the regional office is to decline to investigate or prosecute the charge.
- **It is no longer NLRB policy that so-called “stay or pay” employment terms—**

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which require employees to repay training costs, sign-on bonuses, and the like if they leave a job before a certain deadline—violate the NLRA.

- General Counsel Abruzzo contended that “stay or pay” provisions dissuaded employees from engaging in protected activity for several reasons, including by increasing the financial impact of a termination and so increase the fear of a termination.
- Cohen’s action again effectively means if a regional office receives an unfair labor practice charge alleging that a “stay or pay” is unlawful, the regional office is to decline to investigate or prosecute the charge.

- **Regional offices will likely return to seeking traditional remedies for NLRA violations.**

- Under policies set by General Counsel Abruzzo, regional offices were directed to seek what she called “full remedies” against employers, including never-before sought orders directing reimbursement of financial costs resulting from a lost job, such as interest on credit-card balances run up to cover expenses.
- Following Cohen’s rescission of that previous guidance, NLRB regional offices pursuing unfair labor practice charges are likely to limit remedies to back pay and reinstatement in the event of a finding an employer violated the Act.

NLRB general counsel memoranda do not carry the force of law but instead reflect the policies and priorities of the general counsel, who is the top administrator of the agency. Binding NLRB precedent is set through decisions of the five-member NLRB, which is typically made up of three members from the political party of the President and two members from the opposite party. Accordingly, some of the more union-friendly decisions from the past administration will remain in effect until the NLRB overturns them. These include the *McLaren Macomb* decision, which restricts the use of non-disparagement clauses in severance agreements, and the *Stericycle Inc.* decision, which adopts strict rules addressing the interpretation of employers’ neutral handbook policies to determine whether those policies unlawfully chill protected activity.

The current NLRB is hamstrung, however, because it has only two members after President Trump fired Democratic member Gwynne Wilcox. Under a 2010 U.S. Supreme Court decision, the NLRB is not authorized to decide cases (and so can neither affirm or reverse precedent) when less than three members participate.