

CLIENT ALERTS

NLRB Acting General Counsel Rescinds Biden-Era Labor Memoranda Relating to Non-Competes, Severance Agreements, *Cemex*, and Other Labor Law Issues

Client Alert

2.19.2025

What Happened?

On February 14, Acting General Counsel William Cowen issued General Counsel (GC) Memorandum 25-05, which rescinded more than a dozen policies endorsed by the previous National Labor Relations Board (NLRB) General Counsel. The rescinded memoranda included positions on the legality of non-competition agreements, "stay or pay" provisions, and the classification of college athletes as employees. The memo signals a shift in labor law policy under the Trump administration and indicates a different approach by the NLRB regarding significant legal issues facing employers.

What is the Legal Impact of General Counsel Memoranda?

The NLRB General Counsel supervises NLRB attorneys and the investigation and prosecution of complaints under the National Labor Relations Act (NLRA). The General Counsel's memos and guidance are not binding law, but they do set the direction of governmental legal arguments and often lead to legally binding NLRB decisions through litigation.

What Specific Policies Were Rescinded by ACG Cowen?

Cowen's memo, in addition to rescinding memos on non-compete agreements violating labor law, and prohibition of "stay or pay" provisions, also rescinds several significant policies including:

- Guidance relating to confidentiality and non-disparagement clauses in severance agreements (*McLaren Macomb*, 372 NLRB No. 58).

Related People

Brett J. Miller
Shareholder

Related Services

Labor and Employment

CLIENT ALERTS

- Rescinding the prior GC's memo regarding whether employers can hold "captive audience" speeches (*com Services LLC*, 373 NLRB No. 136).
- Rescinding memorandum regarding demands for recognition and issuing of bargaining order remedies where only alleged minor unfair labor practices have occurred (*Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130). AGC Cowen will provide further guidance on this important topic for employers.

Conclusion

Acting General Counsel Cowen's memo represents a significant shift in NLRB policy under the Trump administration. By rescinding previous General Counsel memos, Cowen has signaled a move away from the expansive interpretations of federal labor law endorsed by the previous administration. Employers should monitor further updates and consult with counsel to understand the implications of these changes on their businesses, particularly regarding non-competition agreements, severances, and union organizing.

Butzel's Labor and Employment Team stands ready to answer all of your labor law questions as well as any other labor and employment issues that may arise.

Brett Miller

313.225.5316

millerbr@butzel.com