

Acting NLRB General Counsel Rescinds Several Biden-era Memorandums

On **Feb. 14, 2025**, the Acting General Counsel (GC) of the National Labor Relations Board (NLRB) issued a memorandum rescinding several policies issued by the previous NLRB GC, including memorandums addressing severance and noncompete agreements, captive audience bans and the rights of student-athletes under the National Labor Relations Act (NLRA). The memorandum also restores prior guidance that delegated authority to authorize certain disclosures by the NLRA to the Division of Legal Counsel and indicates that the GC will issue new guidance to replace some rescinded memorandums.

Background

GC memorandums are not binding law; however, they inform NLRB field offices of the GC's NLRA enforcement priorities. These memorandums are essential resources for employers, offering guidance on how the board interprets and applies federal labor law in various situations. They clarify the NLRB's interpretation of the NLRA, reflect shifts in policy or enforcement priorities, and outline how the board plans to apply legal precedents to new circumstances.

Overview of the Memorandum

The GC memorandum impacts 31 memorandums issued between 2021 and 2025. Among the most impactful rescissions include the following memorandums that are no longer in effect:

- [GC 25-01](#) Remedying the Harmful Effects of Non-Compete and "Stay-or-Pay" Provisions that Violate the NLRA;
- [GC 23-08](#) Non-Compete Agreements that Violate the NLRA; and
- [GC 21-08](#) Statutory Rights of Players at Academic Institutions (Student-Athletes Under the NLRA).

Additionally, the memorandum signals that the NLRB will take a different approach regarding recent board decisions, including determining the legality of severance agreements and captive audience bans and when employers are required to bargain with unions. The memorandum also indicates that the GC will provide further guidance on how employers can respond to union recognition demands. While the memorandum does not reverse the current application of these decisions, it does indicate the NLRB will likely have a different view on important longstanding federal labor laws.

Employer Takeaways

The acting NLRB GC will likely take a different approach to federal labor law that will impact employers. Although the GC memorandum is not binding, it provides a framework for several potential major policy changes at the NLRB. However, any changes will likely occur slowly since the board currently does not have a quorum. Therefore, while employers can take steps now to comply with the memorandum (including evaluating any existing stay-or-play provisions and noncompete agreements), they should continue to monitor for updates.

Provided by Ollis/Akers/Arney Human Resources Consulting

This Legal Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. © 2025 Zywave, Inc. All rights reserved.