

The NLRB Enforcement Rollback Begins: Acting GC Rescinds Nine Existing General Counsel Memoranda

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On February 14, 2025, Acting National Labor Relations Board ("NLRB") General Counsel William B. Cowen issued [GC 25-05](#) to all field offices, rescinding no less than nine (9) prior GC Memoranda issued by his predecessor Jennifer Abruzzo. Although not completely unexpected, the breadth of the rescissions touches upon a wide variety of labor law topics and ones that were the most important to former GC Abruzzo. For ease of reading, the rescinded memoranda are listed below with links to their content and a brief summary of their impact and the resulting status of the subject matter.

[GC 21-06 & GC 21-07: Remedies.](#)

GC 21-06 and 21-07 directed the pursuit of consequential damages in addition to front pay and back pay in litigation and settlements, respectively.

Comment: These remedies have already been the subject of judicial retrenchment in the Third Circuit (which covers PA, NJ and DE). See, *NLRB v. Starbucks Corp.* U.S. Ct. App. 3d (Dec. 27, 2024) where the Court found no relationship between the consequential damages and back pay.

[GC 21-08: NCAA Athletes.](#)

The memo applied "employee" status to "student-athletes" at academic institutions and broadened NLRA protections to student-athletes.

Comment: The memo reinstated a 2017 memorandum, which had been rescinded in 2018. This topic is now governed by 2016 enforcement guidance.

[GC 23-05: Severance Agreements.](#)

In [McLaren-Macomb](#), a divided Board issued a decision that found many standard severance agreement clauses violative of Section 7 rights. In a post *McLaren-Macomb* Memo, GC Abruzzo went even further than the Board's decision, and recommended pursuit of an even broader scope of severance agreement terms that she determined "chilled the exercise of Sec. 7 rights".

Comment: The memo caused great confusion among employers and employees alike. On appeal, the 6th Circuit Court of appeals failed to address the scope of the Board decision and the GC memo, leaving employers and attorneys scratching their heads. The walk back of this memo by the new GC is a strong indicator that prosecutorial direction is changing. Further, because the Board decision presently stands, it is expected that the Board, if and when it gains a quorum in order to issue decisions, will take another look at *McLaren-Macomb*.

[GC 23-02: Electronic Monitoring of Employees.](#)

This memo urged the prosecution of employee monitoring technology, and productivity algorithms or AI that might possibly interfere with employees' Sec. 7 rights. The memo urged the Board to adopt a new analytical framework creating a rebuttable presumption that employer surveillance practices and technology violate Sec. 7 of the NLRA.

Comment: The rescission of this memo only provides partial legal relief to employers because ANY conduct by an employer in the subject matter of surveillance of protected Section 7 rights remains a hot-button issue for unfair labor practice charges and elections.

GC 23-08: Non-Compete Agreements.

This memo took the position that non-compete agreements chill the exercise of Sec. 7 rights of the employee while employed, and would inhibit them from acting in a concerted fashion to threaten to resign or demand better working conditions, among other protected rights.

Comment: This won't likely arise again. A more formal, Federal Trade Commission Rule on the same subject was struck down by a federal court in August 2024. The subject matter remains one of state statutory and common law and not regulated by the federal government.

GC 25-01: Remedies for Non-Compete "Stay or Pay" clauses.

This memo sought to expand financial remedies for employees subject to non-competition covenants and "stay or pay" agreements, not only nullifying them, but providing a means of seeking monetary damages allegedly caused by the lack of mobility imposed by the clauses.

Comment: The GC rescission of this memo follows the guidance to get out of the non-compete arena altogether, leaving this subject matter to state law.

GC 24-01: The Cemex Rule decision.

This memo followed the *Cemex* decision, in which the Board held that an employer, when presented with a demand for recognition must (1) recognize the union and begin bargaining; (2) promptly file its own RM Petition to challenge the appropriateness of the proposed unit; or (3) do nothing, and risk a ULP during an RC Petition, which could result in an immediate bargaining order and cancellation of the election altogether.

Comment: The memo itself largely explained the status of the law following *Cemex* and urged strict compliance therewith. The *Cemex* Board decision remains pending on appeal to the 9th Circuit Court of Appeals. Meanwhile, the new Trump appointed Board, once operable, will likely look for a case to use to overturn *Cemex* if the 9th Circuit doesn't do so.

GC 21-01: Mail Ballot Elections:

This memo continued the practice of supporting mail ballot elections, which were authorized during the COVID-19 pandemic.

Comment: The process is no longer warranted following the pandemic.

GC Cowen, a career NLRB counsel himself, appeared to acknowledge that the prior administration's vigorous activity in seeking to expand the scope of the application of the NLRA to subject matter not previously addressed, seemed to have overwhelmed the staffs at all the regional offices, who have battled increasing volume with reduced staffing and stagnant budget increases. "Notwithstanding these efforts, we have seen

our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing," said Cowen. He also stated that he decided to walk back these memos AFTER consulting with agency officials both in the field and at headquarters.

Although General Counsel memoranda do not have the force of law, they are a strong indicator of prosecutorial emphasis and a glimpse of where the GC wants the Board to go with a given subject matter.

For any questions related to this recent action, please reach out to [Kevin A. Moore](#), the chair of [Barley Snyder's Labor Law Practice Team](#).

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