

February 2018

General Counsel Memorandum Maps New Direction for the National Labor Relations Board (NLRB)

On December 1, 2017, recently appointed General Counsel Peter B. Robb (“Robb”) of the National Labor Relations Board (“the Board”) issued a [memorandum](#) outlining the direction he intends to guide the prosecutorial arm of the agency during his term. In his role as General Counsel, Robb advances policy initiatives by selecting cases and legal theories to bring before the Board. As the General Counsel and Board members are all appointed by the President, employers can expect a shift away from the prior administration’s pro-union agenda. Robb’s memo lists many areas he views as ripe for the Board’s review, most being areas where the Obama-era Board greatly expanded employee rights and limited those of employers. Although we cannot predict how the Board will act, we can expect activity, and possible reversal, on the following key subjects:

- **Handbook Rules** — Employer rules that the Obama-era Board found unlawful, such as those prohibiting an employee’s use of an employer’s trademarks and logos, and requiring employees to maintain the confidentiality of workplace investigations, will likely be revisited.
- **Use of Employer Email Systems for Union Activity** — The Obama-era Board’s controversial decision, which is still being litigated in federal court, that prevents employers from prohibiting employees from using their email systems for union organizing and other activity, is likely to come under renewed scrutiny by the current Board.
- **Employee Discipline** — During the prior administration, the Board complicated and vastly expanded employers’ obligations when imposing discipline on employees. For example, employers are currently required (with very limited exceptions) to provide unions with witness statements gathered in the course of an investigation of employee misconduct. The Obama-era Board also instituted a requirement that employers who are bargaining for an initial collective bargaining agreement bargain with the union when imposing serious discipline, such as suspension or termination. All of these decisions are likely to be reconsidered by the new Board.
- **Terminating Dues Check-off Upon Expiration of a CBA** — For decades, the Board had held that an employer could discontinue the automatic deduction of union dues once a collective bargaining agreement expired, but the Obama-era Board overturned this long-held precedent and required employers to continue deducting dues. We can expect that the new Board will revisit that decision if presented with a case by the General Counsel.

Robb also announced that his office will no longer seek to expand Weingarten rights to non-union employees, to seek front-pay in Board settlements, or to broaden employees’ access to employers’ IT systems for union activity.

TAKEAWAYS

Robb’s memorandum provides an overview of his agenda as General Counsel and signals a prosecutorial arm that will be more employer-friendly. The Board’s recent decisions, which returned to prior precedents, indicate that Robb’s agenda will likely be well met by the Board. Employers should be aware, however, that the Board’s decisions generally follow the agenda of a President’s political party. As such, employers should consult with an attorney before modifying their policies and

practices.

For more information, or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#):

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