

# Electronic Alert

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## Flurry of Personnel & Policy Changes at the NLRB

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Significant personnel and policy changes are afoot at the National Labor Relations Board (“NLRB”). The Biden administration has wasted no time in overhauling the NLRB’s personnel in order to reverse many of the policies put in place under the previous administration.

### **New Administration Moves Swiftly on NLRB Personnel Changes**

Hours after the inauguration, President Biden fired the NLRB’s General Counsel, Peter Robb, and has since nominated Jennifer Abruzzo to serve as NLRB General Counsel. Abruzzo previously served as Special Counsel for the Communications Workers of America (“CWA”), the largest communications and media labor union in the United States. In her new position as NLRB General Counsel, Abruzzo will have broad discretion to determine labor policy.

Before Abruzzo was nominated, the Acting General Counsel of the NLRB, Peter Sung Ohr, made some significant policy changes by rolling back a slew of memos issued by former General Counsel Robb, that provided guidance regarding the National Labor Relations Act (“NLRA”). According to Ohr, he rescinded the memos because they were “inconsistent” with the NLRA’s purpose of encouraging collective bargaining and protecting workers’ rights, or because they were obsolete or contrary to Board law.

### **General Counsel Memoranda Rescinded**

One of the most significant directives rolled back by Ohr was a memo issued by his predecessor that provided guidance on employee handbook rules and policies following the NLRB’s decision in *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017). As a reminder, the decision in *Boeing* afforded employers more deference in their handbook policies by announcing a new balancing test by which workplace rules would be judged. The *Boeing* test determines lawfulness of a workplace rule by weighing the business justifications for the rule against the rule’s potential impact on employees’ rights. Following *Boeing*, former General Counsel Robb issued a memo providing examples and explanations to help employers determine whether certain policies are permissible under the NLRA. Ohr’s stated rationale for rescinding the memo was that it was no longer necessary given the number of Board decisions interpreting *Boeing* since it was issued.

Other memos Ohr rescinded that are worth noting include the following: a memo that put new restrictions on agency investigations and lawyers receiving recorded or documentary evidence; a pair of memos that lowered the bar for prosecuting unions; memos that increased the level of detail unions had to include in financial notes and called for imposing new rules on collecting member dues and nonmember fees; and a memo seeking new limitations on union-employer neutrality agreements.

### **Employers Should Expect Continued Changes by the NLRB**

Employers should expect more policy changes and guidance in the near future and take into consideration that prior NLRB guidance has been or may be rescinded. All workplaces will be affected by the shifting tide of traditional labor law, regardless of whether the employer's workforce is unionized. Barran Liebman will continue to publish E-Alerts on changes at the NLRB so that employers can stay informed of changes on the labor law horizon, and reach out to counsel when needed to ensure compliance with the new guidance and policies.

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