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## In Welcome News for Employers, New NLRB General Counsel Signals Significant Changes Are On The Way

Last week we [blogged](#) about which decisions of the Obama-era National Labor Relations Board (NLRB) might be most ripe for reversal under the NLRB's new membership and General Counsel. This week, on December 1, 2017, we got further insight into those expectations when Peter Robb, the new General Counsel issued a memorandum containing insights into his initial agenda as General Counsel. The memorandum's identification of subjects for special consideration, along with its general tone, provide further strong indications about the likelihood of coming significant policy shifts at the NLRB in favor of employers.

The [Memorandum, GC 18-02](#) (GC Memo 18-02) identifies a wide range of cases that regional offices must now submit to the NLRB's Division of Advice, where its lawyers perform legal analyses, including cases invoking Obama-era NLRB decisions that: (1) have overruled precedent and involved one or more dissents over the past eight years; (2) contain issues the NLRB has not yet decided; and (3) are believed to be of importance to the General Counsel. Such mandatory advice subjects include:

- Section 7 concerted activity for mutual aid
- Employer handbook rules
- Findings of joint employer status, under the *Browning Ferris Industries* ruling, based on indirect or potential control over working conditions of another entity's employees
- Employee use of employer email systems to engage in Section 7 concerted activity
- Strikes, work stoppages, and prior initiatives favoring protection of such activity
- Off-duty employee access to employer property
- Weingarten rights
- Status quo during collective bargaining negotiations
- Successor liability
- Employer duty to bargain over discretionary discipline prior to execution of a collective bargaining agreement (CBA)
- Dues check-off surviving expiration of a CBA
- Unfair labor practice remedies



Many employers will be interested to note that GC Memo 18-02 *expressly rescinds* the prior General Counsel guidance (GC Memorandum 15-04) concerning employer work rules. Under the now rescinded guidance, the NLRB held a number of ordinary handbook policies to be in violation of federal labor law, including those requiring confidentiality in internal investigations, prohibiting workplace cameras or recordings, and mandating a certain level of workplace civility. The rescinded memorandum greatly expanded the types of facially neutral policies and work rules that the General Counsels office used as a basis to issue unfair labor practice complaints.

The new GC Memo 18-02 also terminates policy initiatives of the prior administration, including those that: (1) extended to other electronic systems the *Purple Communications* decision allowing the use of employer-owned email systems for union organizing; (2) narrowed employer authority to communicate with employees during a union organizing campaign; (3) argued misclassification of employees as independent contractors was, in and of itself, a violation of the NLRA; and (4) expanded application of Weingarten to non-union settings.

As chief-prosecutor for the NLRB, the new General Counsel does not have decision-making authority that authority remains with the five-member board. However, the General Counsels office shapes the national labor policy approach, and GC Memo 18-02 is further confirmation of what can be expected in terms of significant changes to the ways in which the NLRB will analyze and pursue many issues important to employers.