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NLRB General Counsel Releases First Memorandum, Signals Significant Policy Shift

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On December 1, 2017, the newly appointed National Labor Relations Board (“NLRB”) General Counsel, Peter Robb, issued a memorandum styled GC Memorandum 18-02 (the “Memorandum”), which provides insight into his likely agenda as General Counsel. While the Memorandum is relatively brief, it suggests that Mr. Robb may seek to revisit some of the policy decisions rendered by President Obama’s NLRB.

The Memorandum instructs the NLRB’s Regional Offices to seek “alternative analysis” from the NLRB’s Division of Advice regarding 15 separate issues before issuing Complaints, including matters that involve employer handbook rules; joint employer status; off-duty employee’s access to property; protected work stoppages; expanded application of an employee’s Weingarten rights; disparate treatment of represented employees during contract negotiations; establishing a duty to bargain before imposing discretionary discipline where parties have not executed initial collective bargaining agreement; dues checkoff; and appropriate remedies.

The Memorandum also rescinded seven prior General Counsel Memoranda. Employers will be encouraged to note that the Memorandum expressly rescinds General Counsel Memorandum 15-04, which had barred employers from promulgating a host of seemingly innocuous rules in employee handbooks on the grounds that the rules could conceivably chill employees from exercising their Section 7 rights. Moreover, the Memorandum ended a number of initiatives that were pursued by President Obama’s NLRB, including efforts to extend NLRB decisions to electronic systems regularly used in the course of work.

Employers have a number of reasons to be optimistic about the Memorandum, as it seems to portend a more employer-friendly agenda than the previous administration. However, the full implications of Mr. Robb’s tenure will more clearly be seen via Complaints that are proffered and NLRB decisions that are rendered. We will continue to report on NLRB cases and decisions here, so stay tuned.

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