

Client Alert

Global Human Capital & Compliance

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President Trump Shakes Up the NLRB

On January 27, 2025, President Trump terminated National Labor Relations Board (“NLRB”) General Counsel Jennifer A. Abruzzo and Board Member Gwynne Wilcox. While Abruzzo’s termination was widely anticipated, Wilcox’s termination was not and may be challenged in court. Then, on February 1, 2025, President Trump terminated Jessica Rutter, who had become NLRB Acting General Counsel upon Abruzzo’s firing. On February 3, 2025, President Trump named William B. Cowen to serve as Acting General Counsel.

Wilcox’s termination deprives the NLRB of a quorum necessary to enter new decisions or reconsider prior ones. As a result, employers should anticipate delays in cases pending before the Board, but NLRB Regional Offices and Administrative Law Judges will continue to operate as normal.

PRESIDENT TRUMP FIRES GENERAL COUNSEL ABRUZZO AND ACTING GENERAL COUNSEL RUTTER

Four years ago, President Biden took the then-unprecedented step of firing NLRB General Counsel Peter B. Robb and Acting General Counsel Alice Stock. Federal courts upheld the legality of President Biden’s action, recognizing that no provision of the National Labor Relations Act curbs the President’s removal power with respect to the NLRB General Counsel. President Trump has now done the same, by removing General Counsel Abruzzo, the NLRB General Counsel under President Biden, and then Jessica Rutter, who was Deputy General Counsel under Abruzzo and briefly became the Acting General Counsel upon Abruzzo’s firing. President Trump then named Cowen, who has served in several executive roles at the NLRB, as Acting General Counsel.

General Counsel Abruzzo’s permanent replacement, who must first be nominated by President Trump and confirmed by the Senate, will have the opportunity to review and potentially rescind Abruzzo’s prior memorandums regarding more expansive remedies.

PRESIDENT TRUMP FIRES NLRB MEMBER WILCOX

Before Member Wilcox's termination, no other sitting NLRB Member had been removed by the President, and Wilcox has said that she "will be pursuing all legal avenues to challenge [her] removal."

Removal of NLRB Members is generally governed by 29 U.S.C. § 153(a), which states: "Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." The constitutionality of these provisions—and whether Congress has authority to restrict the President's removal authority—is the subject of ongoing litigation. The Supreme Court's 1935 *Humphrey's Executor* decision has historically allowed Congress to insulate the heads of multi-member agencies from the President's removal power, but recent decisions have suggested that the Court may be open to revisiting that precedent.

Apart from the additional vacancy resulting from the Wilcox termination, there remain two other vacant seats at the NLRB. As with the General Counsel's replacement, presidential nominees to serve as Board Members must be confirmed by the Senate. Until at least one of those vacancies is filled to join Board Chairman Marvin E. Kaplan and Board Member David M. Prouty, the Board will lack the necessary quorum to conduct NLRB business.

THOUGH THE NLRB LACKS A QUORUM AND CANNOT ISSUE DECISIONS, SOME ACTIVITY FROM THE NLRB WILL CONTINUE AS USUAL

This is not the first time that the Board has been without a quorum. From January 1, 2008, to March 27, 2010, the Board had only two Members and, at that time, it issued decisions notwithstanding the lack of quorum. When those decisions were challenged, the Supreme Court held that they were invalid. In response, the NLRB promulgated special procedures to address situations when the Board lacks a quorum, but those procedures still prevent a two-Member Board from issuing decisions and orders.

Accordingly, because the NLRB currently lacks the necessary three-Member quorum to do business, it is not permitted to issue new decisions and orders, including reversing prior decisions. Without a quorum of the Board, any existing NLRB decisions, including Biden-era decisions, will remain in effect.

Employers should also bear in mind that as long as the Board lacks quorum, union elections will continue to be processed, unfair labor practice charges can still be brought, and with the appointment of Cowen, Regional Directors can issue complaints.

NEXT STEPS

Employers should develop an action plan in light of these changes at the NLRB. Suggested steps include:

- Identifying all charges and cases currently pending before the NLRB, and consulting with counsel about the impact of these changes on current matters; and
- Consulting with counsel on potential legal strategies in response to the NLRB's special procedures to address the lack of a quorum.

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