

# POLICY CHANGE IMPLICATIONS

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# EFFECT OF CHANGES AT NLRB ON EMPLOYER POLICIES

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1. The Biden Board found employer policies unlawful if they had a reasonable tendency to chill employees asserting their rights when viewed from the perspective of a reasonable employee, even if a contrary interpretation of the rule was also reasonable.
2. The new Board will likely return to a standard supportive of employer rules, and put rules into three categories with guidance – rules that are lawful, rules that are unlawful, and rules that warrant individualized scrutiny.
3. The new Board will return to a more lenient test for determining if an individual is an independent contractor.
4. Return to increasing employer rights to exclude union organizers and others access to the property or solicitations in public areas of the property.

# CHANGES AT NLRB - CONTINUED

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5. Return to a stricter policy in finding protected an individual employee's complaint of some work matter being considered protected concerted activity.
6. Allow employers to discipline for profane and threatening behavior even if in some way connected to union or concerted activity.
7. Allow employers to limit employer's email system for business and not to be used for union or other concerted activities.
8. Allow employers to use surveillance practices in the facility and rejecting claims that such practices limit an employee's engaging in union or protected activity.
9. Allow employers to hold mandatory "captive audience" meetings to educate employees and share views on unionization.

# CHANGES AT NLRB - CONTINUED

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10. Remove interpretations of the Labor Act limiting non-competes and restrictive covenants.
11. Overrule the *Cemex* case establishing a “card-check”-like procedure when an employer commits an unfair labor practice.
12. Give employers more leeway in having policies dealing with social media, outside employment, non-disparagement, and investigation confidentiality.
13. Broader employer rights to limit employees from wearing controversial or political badges such as BLM.
14. Continue doctrine that non-union employees have no right of outside representation for disciplinary interviews.

# HANDBOOK RULES LIKELY TO BE DETERMINED LAWFUL BY TRUMP BOARD

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1. Broad confidentiality rules.
2. Be “respectful” to co-workers, supervisors, customers & vendors.
3. Prohibition on “rude” or “unprofessional” behavior.
4. Do not harm Company’s reputation.
5. Rules against “offensive” behavior.
6. Rules against “inappropriate” behavior.
7. Keep ongoing investigations confidential.
8. Limits on non-competes and outside employment and independent contractors.

NOTE: If the rule has questionable legality, consider adding “disclaimer” such as: “Except to the extent such activities are protected by Section 7 of the National Labor Relations Act.”

# EFFECT ON UNION EMPLOYERS

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1. Allow employer more rights to make unilateral changes in work policies without prior bargaining or permission from the union in applying collective bargaining agreements.
2. Possible return to policy allowing employers to cease deducting union dues under check-off provisions after contract expiration.
3. Allow employers more leeway to engage in hard bargaining.

# EFFECT ON UNION ORGANIZING CAMPAIGNS

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1. Allow more time between filing of union election petition and holding election.
2. Return to voting unit determinations that do not carve out “micro-units” favorable to union success.
3. Return to allowing “captive audience” meetings and one-on-one sessions with employees advocating “union-free” status.
4. More “free speech” for employer against unionization.

# WHAT NEW ACTING GC HAS ALREADY DONE

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Rescinded prior General Counsel Memoranda on the following subjects:

1. Broad enforcement of the mutual aid or protection and inherently concerted doctrines.
2. Full remedies in settlements.
3. Electronic monitoring and algorithmic management of employees.
4. Non-compete agreements.
5. Securing full remedies.
6. Injunctive relief.
7. Guidance about *Cemex* case on card check.
8. Captive audience and other mandatory meetings.

# WHAT NEW ACTING GC HAS ALREADY DONE - Continued

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9. Propriety of mail ballot elections.
10. More than two dozen memos of the former GC are withdrawn.