

# 10 NLRB Memos Withdrawn, Including One on Handbook Rules

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**T**he National Labor Relations Board's (NLRB's) acting general counsel, Peter Sung Ohr, announced Feb. 1 that he was rescinding 10 memos that he considered inconsistent with the National Labor Relations Act's (NLRA's) purpose, including one memo on employee handbook rules. The NLRA encourages collective bargaining and protects workers' right to associate, self-organize and designate union representatives, he noted. We've gathered articles on this news from *SHRM Online* and other trusted sources.

## Handbook Rule Rescinded

The June 6, 2018, memo on employee handbooks from former NLRB General Counsel Peter Robb outlined three categories of rules: rules that are generally lawful, provisions warranting individualized scrutiny and rules that are lawful. Most of the rules mentioned in the memo were deemed to usually be lawful. Ohr said this memo is being rescinded as it is no longer necessary, given the number of NLRB cases interpreting the landmark decision in *Boeing* ([www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/labor-relations-employee-handbooks.aspx](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/labor-relations-employee-handbooks.aspx)).

(*SHRM Online* ([www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/labor-relations-nlr-general-counsel-memo-employee-handbooks.aspx](http://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/labor-relations-nlr-general-counsel-memo-employee-handbooks.aspx)))

## Memo Affecting Whistleblowers Withdrawn

Ohr also rescinded a Robb memo that had raised concerns among some NLRB staffers because it limited how they gathered evidence. That memo had required NLRB staff to tell whistleblowers that they could face federal charges or be disciplined by their employer if they gave the NLRB video or audio that had been obtained illegally. "Note that this memorandum is being rescinded because portions are inconsistent with prior practices," Ohr said. "Regions should continue to not accept recordings that violate the Federal Wiretap Act and to apprise individuals who proffer recorded evidence when it may violate state law."

(Bloomberg (<https://news.bloomberglaw.com/daily-labor-report/nlr-revises-procedures-for-evidence-collection-disclosure>))

## Other Rescinded Memos

Other rescinded memos included a pair that lowered the bar for prosecuting unions, plus two others that increased the level of detail unions had to include in financial notices and called for imposing new rules on the collection of member dues and nonmember fees. Ohr also withdrew a memo seeking new limitations on union-employer neutrality agreements.

(Bloomberg (<https://news.bloomberglaw.com/daily-labor-report/top-nlr-lawyer-rolls-back-broad-slate-of-trump-era-policies>))

## Dismissed Case

Last week, Ohr instructed the NLRB to dismiss a complaint against an Embassy Suites hotel and the Seattle Unite Here local. The case involved a neutrality agreement between the hotel and union. Neutrality agreements limit an employer's rights to campaign against union organization, easing the path to union organization. Robb had been using the case to limit the legality of such agreements nationwide. (JD Supra (<https://www.jdsupra.com/legalnews/new-nlr-general-counsel-peter-song-ohr-5280582/>))

**Ohr Was Recently Appointed**

Ohr was named acting general counsel Jan. 25 after President Biden removed Robb from the general counsel position. Ohr will likely lead the NLRB general counsel's office until the president announces a nominee who is confirmed by the Senate. The role is different from that of being a member of the board: The general counsel enforces the NLRA, selecting which charges are prosecuted and creating the agency's legal strategy, while overseeing staff and case processing in NLRB field offices.

(SHRM Online ([www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/new-nlr-acting-general-counsel-named.aspx](http://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/new-nlr-acting-general-counsel-named.aspx)) and Bloomberg (<https://news.bloomberglaw.com/daily-labor-report/biden-taps-new-nlr-top-lawyer-after-back-to-back-firings>))

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