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November 27, 2023

NLRB and OSHA's New MOU Will Increase Interagency Cooperation and Coordination



The National Labor Relations Board (NLRB) and Occupational Safety and Health Administration (OSHA) executed a [Memorandum of Understanding](#) (MOU) on October 31, 2023, that will help facilitate interagency coordination and cooperation.

The goal of this partnership is to strengthen health and safety protections for workers.

Although this is not the first time these agencies have executed an MOU—the NLRB and OSHA have entered into MOUs to engage in interagency coordination since 1975—this MOU allows for greater collaboration between the agencies. Indeed, this MOU is a part of NLRB General Counsel (GC) Jennifer Abruzzo's broader commitment to working closely with other federal agencies in order to fully effectuate the mission of the National Labor Relations Act (NLRA).

The MOU sets forth a process for information sharing, training, and outreach between the NLRB and OSHA, much like other MOUs into which the NLRB has entered with other agencies, including the Department of Law's Wage and Hour Division and the Office of Labor Management Standards.

### **Information Sharing and Coordinated Investigations**

Under the MOU, information that may be shared between the NLRB and OSHA includes complaint referrals, information in complaint or investigative files that relates to alleged violations of the NLRA, and laws that OSHA enforces. Either agency may share such information upon request or on its own initiative. Additionally, OSHA will provide potential victims of unfair labor practices with contact information for NLRB personnel and, in certain instances, advise them that they may file charges with the NLRB. The NLRB, likewise, will provide workers potentially exposed to health or safety hazards or subject to violations of OSHA-enforced laws with contact information for OSHA personnel, as well as information related to potential violations of laws that OSHA enforces. The agencies will also work together to facilitate referrals from those state agencies that operate

their own occupational safety and health programs under an OSHA-approved plan (State Plans); State Plans will also respond to NLRB referrals regarding potential violations of the particular state's safety and health standards or regulations.

In some cases, the agencies may conduct coordinated investigations and inspections when doing so would not delay enforcement action. If the agencies so coordinate and find overlapping violations of statute, they will confer regarding the appropriate enforcement actions for each agency.

## **Training**

Both agencies will provide ongoing training to appropriate personnel from the other agency. Specifically, the NLRB will train certain OSHA personnel on what constitutes concerted activity, what constitutes an unfair labor practice, and on basic procedures for investigating and adjudicating unfair labor practice charges. OSHA, in turn, will train certain NLRB personnel on OSHA standards, recordkeeping and reporting regulations, the general duty clause, whistleblower provisions, employee rights under section 11(c) of the Occupational Safety and Health Act, and jurisdictional and procedural requirements under those laws. Agencies may also tailor trainings to conditions and violations that field staff will most likely encounter. State Plans will be encouraged to participate in all such trainings.

## **Outreach**

The agencies may also engage in joint public engagement, outreach, and education. Such efforts may occur, for example, at conferences, at events, and on social media. The agencies may also jointly develop policy statements, guidance materials, and technical assistance documents.

To this end, the agencies released a resource called "[Building Safe & Healthy Workplaces That Promote Worker Voice](#)." The resource lists and explains certain rights related to safety and health. It also provides contact information for both agencies and embedded links that enable a user to report complaints to OSHA and violations to the NLRB.

## **Takeaways for Employers**

Such coordinated investigation and enforcement efforts can expose employers to a greater number of enforcement actions and penalties. Employers should seek the advice of experienced labor and employment counsel when dealing with workplace issues that may present both violations of the NLRA and of laws that OSHA enforces, and/or when dealing with coordinated agency investigations or enforcement actions.

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