June 2, 2025

New Guidance Encourages Settlement of Unfair Labor Practice Cases

In another policy shift, William B. Cowen, the Acting General Counsel of the National Labor Relations Board (Board), issued Memorandum GC 25-06, "Seeking Remedial Relief in Settlement Agreements" (Memorandum), which relaxed the prior administration's requirements that made it more difficult for employers to settle unfair labor practice cases.

In the Memorandum, the Acting General Counsel announced that the non-monetary remedies recommended in the rescinded memoranda, including but not limited to apologies to aggrieved employees, union access to employer bulletin boards, and publication of Board remedial notices on employer social media sites, should be "limited to cases involving widespread, egregious, or severe misconduct." The Memorandum also restores Regional Directors' broad discretion to resolve cases. While the Acting General Counsel encourages Regions to continue pursuing compensation for employees harmed by unfair labor practices, he advises them to "be mindful of not allowing our remedial enthusiasm to distract us from achieving a prompt and fair resolution of disputed matters."

The Memorandum instructs Regions to diligently pursue settlement in every case, noting that settlements are "the principal means by which unfair labor practices are remedied, and employees impacted by unfair labor practices are afforded relief." When drafting settlement agreements, Regions were instructed to seek relief consistent with what the Board would order in similar cases and to request clearance from the Board's Division of Operations-Management and, if appropriate, its Division of Advice if they wish to pursue novel remedies.

To facilitate efficient case resolution, the Memorandum also sets forth the following guidance for drafting and approving settlement agreements:

- **Default Language.** Regions are not required to include default language (i.e., language that would set forth the consequences of failing to comply with the agreement) in every settlement agreement but may use it in initial agreements "where appropriate." While Regional Directors have discretion on whether to include default language in a settlement agreement, they should not fail to reach a settlement simply because a party objects to such language. Nevertheless, certain circumstances, such as those involving recidivist violators, installment arrangements, or liquidated damages, may warrant using default language.
- **Non-Admission Clauses.** Settlement agreements may include a non-admission clause, especially when the settlement occurs immediately after a Region's determination and before substantial trial preparation. However, such clauses are not appropriate in cases involving recidivist violators. Further, even if non-admission clauses are included in settlement agreements, they will never be allowed to be included in Board remedial notices.
- **Unilateral Settlements.** Regional Directors may approve unilateral settlements—those to which the charging party objects—without seeking prior authorization from the Division of Advice.
- **Make-Whole Relief.** Regional Directors should still strive to make employees fully whole when reaching settlements but may approve agreements that provide for less than 100 percent of the total amount that could be recovered if the Region fully prevailed on all allegations in the case. Regional Directors are urged to consider "the nature of the violations alleged, the weight of the evidence, the inherent risks of litigation, and the extent to which a prompt resolution of a contentious dispute will promote labor peace." However, Regional Directors must still seek the Division of Operations-Management's authorization before approving a proposed settlement agreement that provides for less than 80 percent of the anticipated recovery.

With regard to the scope of damages, the Memorandum clarified the standard Regions should use as a result of the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), a case in which the Board expanded the scope of available remedies for unfair labor practices to include "direct or foreseeable pecuniary harms." The Acting General Counsel directs Regions to "focus on addressing foreseeable harms that are clearly caused by the unfair labor practice" when reaching settlements. Although this guidance is not binding on the Board in future cases, it assists parties in assessing whether proposed settlements will be approved at the Region level.

As always, employers should consult with experienced labor counsel to understand their rights under the shifting landscape of unfair labor practice enforcement.

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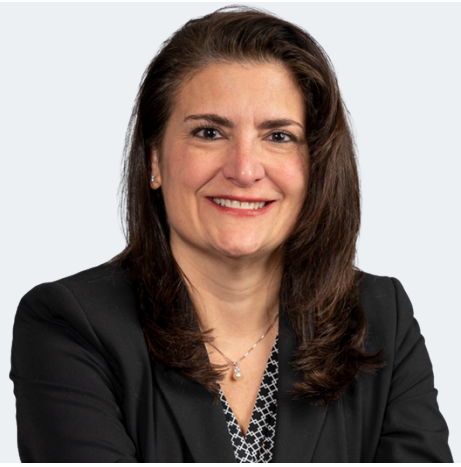

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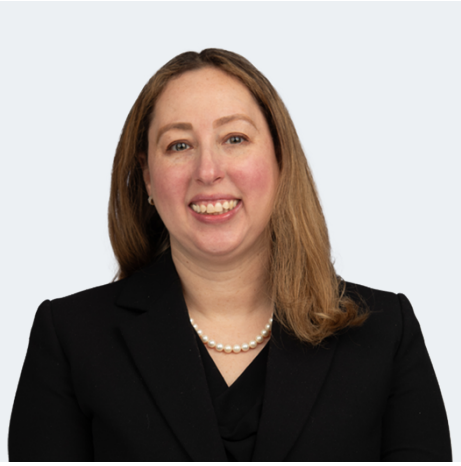

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