

Standing on the Precipice of Major Policy Change

NLRB Quarterly Update: Q1 2022

March 30, 2022

TODAY'S SPEAKERS

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Agenda

- Latest Developments
- General Counsel Initiatives
- Issues to Watch

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NLRB Update
First Quarter, 2022

HRPA Future Workplace Policy Council

https://www.hrpolicy.org/HRPolicy/media/HRWorkforce/2022/03/NLRB_Q1_2022_Report.pdf

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Latest Developments – Significant Decisions Coming Soon

- Issues where the Board has already signaled incoming changes:
 - **Consequential damages** – employers will be on the hook for more than just back pay
 - **Bargaining unit sizes** – increase in micro units and fractured workplaces
 - Smaller units means more union election wins
 - **Independent contractor status** – more employees, less independent contractors
 - **Workplace rules and policies** – heavy scrutiny of employee handbooks
 - **Arbitration agreements** – unlawful under the NLRA?

Employer Workplace Rules Under the Microscope

- Rules/policies found unlawful by Obama-era Board:
 - “Behave in a professional manner”
 - “Maintain a positive work environment”
 - “Work harmoniously in a positive and professional manner”
 - “Do not make false, vicious, or malicious statements concerning the company”
 - “Do not engage in fighting, violence, threats, or harassment”

General Counsel Driving Unprecedented Policy Change

- GC Abruzzo's ambitious policy agenda includes:
 - **Injunctive relief initiative** – employers increasingly dragged into federal court for alleged unfair labor practices
 - **Interagency collaboration and enforcement** – use of all government agency resources to target employers
 - **Union card check authorization/*Joy Silk*** – forced recognition of and duty to bargain with a union based solely on showing of majority of employee support

Looking Ahead...

- Issues where the Board has not yet acted, but is expected to:
 - **Worker Misclassification** - misclassification of an employee as a per se unfair labor practice
 - **Expansion of employee voice** – social, political protests as protected concerted activity
 - **Increased union access to employer property** – physical property and technology (use of employer computers, emails, etc. for organizing purposes)
 - **Employer speech restrictions** – “captive audience” meetings, other types of employer speech during union election campaigns could be prohibited
 - **Joint employer liability** – increased liability for violations of subsidiaries, franchisees, contractors
 - **Mail ballot elections/electronic voting** – moving away from traditional, physical onsite secret ballot election
 - **...and many, many, many more!**