New Year, New NLRB: What Employers Should Expect for Federal Employment and Labor Policy in 2026

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As many of you know, the National Labor Relations Board (NLRB) is the federal agency that enforces the National Labor Relations Act (NLRA). The NLRB handles disputes between employers and employees over union organizing, collective bargaining, and workplace rules. Its reach extends to most private-sector employers, even those without a unionized workforce as certain provisions of the NLRA apply more broadly.

Recent Changes to the NLRB's Composition

As an independent federal agency, the NLRB is composed of a five-member Board whose members are appointed by the President and must be confirmed by the Senate. Board members serve staggered five-year terms and perform a quasi-judicial function, resolving cases brought by the NLRB's General Counsel. A quorum of at least three members is required for the Board to act.

Relatedly, the NLRB's General Counsel serves a prosecutorial and investigative function, investigating potential violations of the National Labor Relations Act and bringing enforcement actions where deemed necessary. The General Counsel also issues guidance memoranda, which serve as opinion letters expressing the General Counsel's position on labor law matters. The guidance memoranda are not the same as Board decisions adjudicating a particular case, and do not represent the opinion of the Board members. Rather, they serve as statements of opinion, policy, and enforcement priority from the General Counsel.

In December 2025, the Senate confirmed two new Board members and a new General Counsel, restoring a quorum and permitting the Board to resume business after nearly a year of institutional paralysis. Given that the new Board members and General Counsel come from backgrounds representing employers rather than unions, the appointments signal a decided pro-employer shift.

What Employers Should Know

Don't expect immediate, large-scale change. Employers should expect NLRB policies that are more favorable to businesses going forward, but the change will be gradual. The NLRB traditionally requires three votes to overturn prior Board decisions, and the current three-member Board is split 2-1 between Republicans and Democrats. Two Board seats remain vacant, and no appointments to those vacant seats appear imminent. This makes overturning recent worker-friendly rulings difficult in the short term. Rather, the most immediate changes are likely to come in the form of policy pronouncements announced via General Counsel guidance memoranda.

Enforcement priorities will shift away from employee protections. The new General Counsel will decide which cases the agency pursues and can choose to interpret current pro-employee precedent narrowly, issue new guidance memoranda

that favor employers, and deprioritize enforcement of certain worker protections. Indeed, that process has already begun. For roughly the past year, the NLRB's Acting General Counsel rescinded several prior guidance memoranda issued during the Biden administration, all of which advocated for stronger worker protections in areas such as employer surveillance, non-compete agreements, restrictive severance agreements, and tuition reimbursement forfeiture. Employers should anticipate that the General Counsel will continue to roll back employee-friendly memoranda issued during the Biden administration.

A bigger shift may come this fall. When Board member Prouty's term ends in August 2026, the President will have the opportunity to appoint a new member in his place, creating a clear majority that could prompt the Board to move more quickly and proactively to overturn pro-employee precedent. At that point, more significant changes to labor rules become possible. For the time being, the Board will likely move slowly, but deliberately, toward a more business-friendly outlook.

Recommendations for Employers

In light of these anticipated changes, employers should consider the following steps:

Review existing workplace policies. Employers should audit their current handbooks and workplace rules to identify policies that may have been viewed as problematic under the prior Board but may now be enforceable under new guidance.

Reassess non-compete and restrictive covenant agreements. With the rollback of prior memoranda scrutinizing non-compete agreements, employers may have greater flexibility in implementing or enforcing such provisions. Employers should work with counsel to evaluate whether updates to restrictive covenants are appropriate given the shifting regulatory landscape.

Monitor developments closely. The period between now and August 2026 will be particularly dynamic. Employers should track new guidance memoranda, Board decisions, and rulemaking activity to stay ahead of changes that could impact their labor relations strategies.

Engage proactively with labor counsel. Given the evolving regulatory environment, employers should maintain close contact with employment and labor counsel to ensure they are positioned to take advantage of favorable developments while remaining compliant with applicable law.