

Prior Administration Board Decisions Still Matter

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There has been a great deal of discussion and internet content over the impact that a new and fully constituted NLRB could have on critical labor issues – and for good reason. The Board in the last several years handed down multiple decisions on key issues that turned decades of precedent on its head. It only makes sense that a more “pro-employer” trend due to the changes in administration would have companies excited at the prospect of “what could be.” However, it is important for employers to remember that such changes can take time and often don’t move at the pace they would like. The fact remains that many of these recent decisions – regardless of how controversial or ill-advised - still hold the weight of law. A good example of this is the NLRB’s issuance of several advice memoranda earlier this week. One of these memos related to a situation where a former employee raised a retaliation claim under the NLRA alleging mistreatment for filing a lawsuit under the Fair Labor Standards Act. This advice memorandum took what employer groups believed to be the rather extreme position that the filing of a lawsuit under an entirely different statute could constitute protected activity under the NLRA (despite the fact that the FLSA has its own retaliation protections). This advice memo was initially drafted in October of 2014 under the prior administration and ultimately the Board took the same position in May 2017. The issuance of this memo, essentially reinforcing a position that seems inconsistent with the current administration’s approach to such matters, is indicative of how the process is not always as quick as we would like. While we all remain optimistic that decisions like this will be ultimately overruled, employers need to be cautious and cognizant of the **current** state of the law. A copy of the Advice Memorandum is available [here](#).

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