



Employers Beware: NLRB General Counsel Pushes For Expanded Economic Penalties

September 10, 2021 | [Labor And Employment, National Labor Relations Board](#)



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Historically, remedies for violations of the National Labor Relations Act (NLRA) have been limited to “make whole” remedies, and the only monetary remedy typically available was straight back pay in discharge cases. National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo recently signaled a shift in policy that would greatly expand the universe of available remedies for discharge and other types of cases.

On Sept. 8, 2021, Abruzzo issued a [memorandum](#) to all NLRB Regional Offices advising them to request from the Board “the full panoply of remedies available” for unfair labor practices. The memo discusses a variety of remedies that should be sought in different cases.

In cases involving unlawful firings, regions are encouraged to seek compensation for consequential damages, front pay, and liquidated back pay. Where the unlawful firings implicate undocumented workers, the remedies should also include compensation for work performed under unlawfully imposed terms, employer sponsorship of work authorizations, and any other remedy that would prevent an employer “from being unjustly enriched by its unlawful treatment of undocumented workers.”

For cases involving unlawful conduct committed during a union campaign, Abruzzo suggests regions seek remedies such as union access to employees; reimbursement of organizational costs; reading of the Notice of Employees and Explanation of rights by a principal or board agent;

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publication of the notice in newspapers; visitatorial and discovery clauses to assist the agency in monitoring compliance with NLRB orders; extending posting periods for notices; training employees, supervisors, and managers of employees rights under the NLRA and compliance with Board orders; instatement of a qualified candidate of the union's choice if a discharged employee is unable to return to work; and broad cease and desist orders.

This memo signals a stark departure from the types of limited "make whole" remedies traditionally awarded by the Board. While there have been [NLRB back pay awards stretching into the millions](#) in some cases, those were extremely rare. Employers should be prepared to face expanded remedies, especially increased monetary remedies, for violations before the Board.