

NLRB Now Permits Front Pay In Lieu Of Reinstatement In Board Settlements

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The NLRB has traditionally refused to include the concept of front pay in lieu of reinstatement in formal Board settlements. As such, if an employer was interested in resolving an NLRB case that involved employee terminations, but not interested in bringing those terminated employees back to work, the only avenue was a non-Board settlement. That may change based on a new guidance memo the Acting General Counsel issued Jan. 9, 2013.

Noting that most agreements involving waivers of reinstatement in exchange for payment of front pay "are entirely non-Board" settlements, and that Agency policy should favor Board settlements, not discourage them, the AGC "decided to modify existing policy to permit Agency settlements to include front pay." The Board's Case Handling Manual will be revised to reflect this change. The updated manual instructs that offers of front pay in lieu of reinstatement be communicated to alleged discriminatees, but without pressuring them to waive reinstatement. The Region is "serving only as a conduit for the proposal" pursuant to the updated language in the Manual.

The memo also requires that waiver of reinstatement be in writing, unless otherwise authorized by Operations-Management in a particular case. The full memo with updated language in the Case Handling Manual can be [found here](#).

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