

Federal Agencies Announce Closer Partnership in Enforcing Workplace Laws

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On October 31, 2023, the Occupational Safety and Health Administration (OSHA) and the National Labor Relations Board (NLRB) published a joint memorandum of understanding whereby they detail “a process for information sharing and referrals, training, and outreach between the agencies” regarding the laws they enforce, including but not limited to their anti-retaliation provisions and whistleblower protections.

In the memorandum, the agencies stress that they may, upon request or their own initiative, share “any information or data that supports each agency’s enforcement mandates, whether obtained during an investigation or through any other sources to the extent permitted by law.” The procedures outlined in the memorandum also contemplate the possibility of “coordinated investigations and inspections.” In these regards, the memorandum suggests the agencies should train each other’s employees on the laws they respectively enforce.

While the agencies claim the memorandum is not “intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions,” such statement is difficult to reconcile with the fact that the memorandum appears to suggest OSHA and the NLRB should effectively share knowledge and enforcement authority with one another. In other words, the memorandum appears to instruct OSHA inspectors to look for or report what they believe to be unfair labor practices and NLRB investigators to look for or report what they believe to be unsafe working conditions. On some level, this seems inconsistent with the scope of authority delegated by law to each respective agency.

Time will tell whether and to what extent this memorandum will have any material effect on enforcement practices at either agency; however, it is important for employers to take notice of this recent announcement, especially if an employer is dealing with an OSHA investigation or NLRB complaint.

Retaining counsel immediately in such circumstances is key to mitigate against risks and help control the trajectory of a complaint or investigation by either of these agencies. Failing to do so may inadvertently lead to the involvement of multiple federal agencies in your workplace, not to mention the possibility of multiple fines, penalties, or other proceedings.

Don't hesitate to contact a member of our Labor & Employment Team for assistance. We are here ready to help you navigate this increasingly complex web of federal law enforcement.