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What's Next After Trump Removes EEOC, NLRB, and Other Agency Officials?

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In this article, the authors discuss the implications of the decision by President Trump to remove officials at the Equal Employment Opportunity Commission and the National Labor Relations Board.

In a flurry of activity, President Trump dismissed the general counsel for the Equal Employment Opportunity Commission (EEOC), the general counsel for the National Labor Relations Board (NLRB), and the initial acting general counsel of the NLRB who temporarily filled in the general counsel role.

President Trump also removed a Biden-appointed NLRB board member and two Biden-appointed EEOC commissioners. These actions are likely to disrupt operations at these agencies, including with respect to any ongoing formal matters and in the dissemination of general guidance and oversight they provide.

NLRB

Background

The NLRB is a federal agency that, in addition to its role in regulating employer and union dynamics, protects the rights of most private sector employees to engage in protected concerted activity.

In recent years, the NLRB issued a variety of decisions and interpretative guidance that impacted the private sector workplace, including actions aimed at: (1) narrowing the scope of non-disparagement and confidentiality provisions, and (2) curbing or eliminating the use of

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non-compete and non-solicitation restrictions that, per the NLRB, interfere with protected rights.

The Latest Trump Action

The dismissal of the NLRB general counsel (Jennifer Abruzzo) was expected and followed a similar move by former President Biden who, when he took office, dismissed the then Trump-appointed NLRB general counsel. President Trump's next move, replacing the acting general counsel (Jessica Rutter) with the head of the NLRB's Los Angeles Office (William Cowan) broke with the general practice of prior administrations, though it was not entirely unexpected given President Trump's public statements about reshaping certain federal agencies. President Trump's further step of removing a sitting (Democrat)-appointed NLRB board member (Gwynne Wilcox) is unprecedented. Former board member Wilcox has already filed a legal action challenging her removal, though it is unclear at this stage how a court may rule.

The Fallout

These moves have left the NLRB with only two board members, one Republican appointee and one Democratic appointee, and without a quorum. The Supreme Court ruled¹ in 2010 that the NLRB must have at least three board members to constitute a quorum. As a result, the two member NLRB is hamstrung until President Trump appoints at least one new board member who is then confirmed by the Senate.

Given these conditions, the NLRB issued a statement on February 1, 2025 entitled "Information for the Public on NLRB Office of the General Counsel Authority for Continuing Operations, Representation Case Processing, and Court Litigation"² citing to regulations and orders instituted in the wake of the 2010 Supreme Court decision, to try to reassure the public that the NLRB's Field Offices will "continue their normal operations of processing unfair labor practice cases and representation cases." While President Trump has now installed his preferred acting general counsel, the lack of a Senate-confirmed general counsel may potentially impact, delay, or possibly derail pending investigations. While the broader agency of the NLRB may be able to continue day-to-day activities, without a quorum, the NLRB will be unable to carry out its more high-level function of setting guidelines impacting the workplace.

The termination has already been subject to court challenge. On March 6, 2025, Judge Beryl A. Howell of the U.S. District Court for the District of Columbia held³ that President Trump's actions in terminating Board Member Cox were illegal and ordered that she be restored to her position on the NLRB. The court's decision relied principally on a 1934 U.S. Supreme Court opinion, *Humphrey's Executor v. United States*,⁴

which analyzed the protections from termination of Federal Trade Commission (FTC) commissioners. The court determined that the FTC, like the NLRB, serves functions that are not purely executive in nature and that, due to their “quasi-legislative” and “quasi-judicial” functions, Congress was able to put in place certain statutory protections against unfettered executive control.

The court's decision will likely be appealed. Until the appeals are resolved, uncertainty as to the NLRB's power remains. If ultimately, President Trump is able to have a new general counsel and additional board appointees confirmed by the Senate, the NLRB's decisions and policy priorities are expected to take a dramatic turn in a pro-employer direction. In the interim, however, employers faced with pending NLRB disputes or those subject to investigation should seek to preserve their rights regarding the potential lack of NLRB authority in light of these recent personnel dismissals.

EEOC

Background

The EEOC is generally responsible for enforcement of the nation's employment discrimination in employment, including on the basis of race, color, religion, sex, national origin, age, disability, and genetic information. Like the NLRB, the EEOC has a formal investigatory and enforcement role and also issues guidance on issues within its regulatory scope.

The Latest Trump Action

Similar to the dismissal of the NLRB general counsel, President Trump took early action to dismiss the EEOC general counsel (Karla Gilbride), an action in line with historical precedent. In a move without any historical precedent, however, President Trump further removed sitting EEOC commissioners (Charlotte A. Burrows and Jocelyn Samuels). They are currently evaluating their legal options in response.

The Fallout

With only 2 commissioners remaining, the EEOC is similarly without a quorum to formally adjudicate matters.⁵ In light of certain pre-emptive protectionary measures⁶ taken by the EEOC in December 2024 shortly before President Trump's inauguration, the EEOC voted to approve “a limited delegation of authority in the event of a loss of quorum,” which was intended to allow for “continued contracting approval, decisions on

petitions to revoke or modify enforcement subpoenas, and ministerial changes to regulations compelled by statute”⁷ to be undertaken by other persons within the broader EEOC agency. Until a quorum is re-established, major interpretative and enforcement guidance from the EEOC will not be forthcoming.

The biography on the EEOC’s website accompanying President Trump’s appointment of Andrea Lucas as acting chair of the EEOC provides a preview of likely EEOC enforcement and policy priorities. Acting Chair Lucas’s biography states that she will aim to prioritize “evenhanded enforcement of civil rights laws for all Americans,” including:

- “[R]ooting out unlawful DEI-motivated race and sex discrimination;”
- “[P]rotecting American workers from anti-American national origin discrimination;”
- “[D]efending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces;”
- “[P]rotecting workers from religious bias and harassment;” and
- “[R]emedying other areas that have been historically under-enforced by the agency.”

These priorities echo many of the underlying themes in President Trump’s wide-ranging executive order on “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.”

NOTES

1. <https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560674/usrep560674.pdf>.

2. <https://www.nlr.gov/news-outreach/news-story/information-for-the-public-on-nlr-office-of-the-general-counsel-authority>.

3. https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2025cv0334-35.

4. <https://tile.loc.gov/storage-services/service/ll/usrep/usrep295/usrep295602/usrep295602.pdf>.

5. See Title VII, 42 U.S.C. § 2000e–4(c) (noting that “three members . . . shall constitute a quorum”).

6. <https://www.eeoc.gov/wysk/state-eeoc-frequently-asked-questions#:~:text=What%20is%20a%20E2%80%9Cquorum%E2%80%9D%20as,a%20quorum%20at%20the%20agency>.

7. See *id.* Question 4.

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