



nlrAdvice on covid-19

NLRB's General Counsel Issues Advice Concerning COVID-19

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As federal, state and local measures are being enacted to help curb the spread of the Coronavirus, the General Counsel for the National Labor Relations Board ("NLRB") recently issued a memo intended to assist the public, employers and unions in analyzing the impact that emergency decision-making by unionized employers have on collective bargaining obligations. The memo issued on March 27, 2020, and is directed to the Regional Directors, Officers-in-Charge and Resident Officers of the several NLRB field offices throughout the country. The General Counsel has the sole statutory authority to determine whether to issue an unfair labor practice complaint for alleged violations of the National Labor Relations Act, including violations based on an employer's alleged failure to bargain with a union over changes in business operations affecting employees represented by the union.

Although the General Counsel's memo does not offer specific guidance regarding bargaining obligations over workplace measures taken or being considered in order to comply with the emergency laws enacted to control the virus, the memo discusses prior NLRB case law in which employers have argued emergency circumstances as a defense to claims of unlawful failure to bargain over changes in business operations affecting union-represented employees. The General Counsel notes that under these prior cases, the NLRB has recognized "an exception to the duty to bargain exists where the employer can demonstrate that 'economic exigencies compell[ed] prompt action[,] [and] that this exception is limited to 'extraordinary events which are an unforeseen occurrence, having a major economic effect requiring the company to take immediate action.'"

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