

NLRB and FTC Jointly Issue MOU on Information Sharing, Training, and Outreach

The National Labor Relations Board (NLRB) and the Federal Trade Commission (FTC), on July 19, 2022, jointly issued a memorandum of understanding (MOU) regarding information sharing, cross-agency training, and outreach of common regulatory interests.

The MOU acknowledges that, although the FTC functions to "prevent anticompetitive, deceptive, and unfair business practices" and the NLRB functions to "prevent and remedy unfair labor practices and to conduct elections among employees to determine whether they wish to be represented by a labor organization[,] both agencies generally "share an interest in protecting American workers and promoting fair competition in labor markets[.]" Specifically, the memorandum identifies several "issues of common regulatory interest" including "labor market developments relating to the 'gig economy' and other alternative work arrangements; claims and disclosures about earnings and costs associated with gig and other work; the imposition of one-sided and restrictive contract provisions, such as noncompete and nondisclosure provisions; the extent and impact of labor market concentration; the impact of algorithmic decision making on workers; the ability of workers to act collectively; and the classification and treatment of workers."

Because of these common interests, the organizations entered into the MOU to facilitate three different objectives: (1) information sharing and cross-agency consultations on an ad hoc basis for official law enforcement purposes, in a manner consistent with and permitted by the laws and regulations that govern the FTC and NLRB; (2) cross-agency training to educate each agency about the laws and regulations enforced by the other agency; and (3) coordinated outreach and education as appropriate. In order to effectuate these objectives, the NLRB and FTC may provide each other with nonpublic information "concerning issues of common regulatory interest on an ad hoc basis."

In a press release announcing the MOU, NLRB General Counsel Jennifer Abruzzo stated that when businesses interfere with workers' rights to collectively improve their worker conditions, "it hurts our entire nation." Accordingly, "[t]his MOU is critical to advancing a whole of government approach to combating unlawful conduct that harms workers."

Similarly, FTC Chair Lina Khan announced that she is "committed to using all the tools at our disposal to ensure that workers are protected from unfair methods of competition and unfair or deceptive practices." To that end, she believes the memorandum "will help deepen our partnership with NLRB and advance our shared mission to ensure that unlawful business practices aren't depriving workers of the pay, benefits, conditions, and dignity that they deserve."

This MOU comes after General Counsel Abruzzo, in February 2022, issued a memorandum to all field offices, committing to working closely with other federal agencies to fully effectuate the mission of the National Labor Relations Act (NLRA) and take action on interagency collaborations.

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