



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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**"Every record has been destroyed or falsified, every book rewritten,
every picture has been repainted, every statue and street building has been renamed,
every date has been altered.**

**And the process is continuing day by day and minute by minute. History has stopped.
Nothing exists except an endless present in which the Party is always right."**

-George Orwell, 1984-

NLRB GENERAL COUNSEL LOOKING TO MAKE IT EASIER FOR WORKERS TO WIN DAMAGES FROM UNIONS

The National Labor Relations Board's General Counsel ("NLRB") is looking to lower the bar for workers to win back pay awards from labor unions that they allege failed to meet their legal duty to fight unfair firings or other disciplinary actions.

According to a memorandum from the NLRB's General Counsel Peter Robb released on July 3, 2020, the General Counsel is directing that regional offices investigate and bring cases against unions that mishandled workers' grievances with the goal of persuading the Board to change long-standing agency case law from *Ironworkers Local Union 377 (Alamillo Steel)*, 326 NLRB 375 (1998) which holds that agency prosecutors must prove the worker would have won if the union had not mishandled their disciplinary action in order to award the worker damages from the union.

The memorandum states that regional offices should "urge the board to reverse *Alamillo Steel* and adopt a standard requiring that, once the general counsel establishes that the underlying grievance has 'arguable merit,' the burden shifts to the respondent union to establish that the grievance was not meritorious."

The memorandum makes the argument that the NLRB should overturn the *Alamillo Steel* standard because it "places nearly an impossible burden" on prosecutors and hurts aggrieved workers. The memorandum stated that instead the NLRB should shift the burden to the union and have the union defend itself after prosecutors make a basic showing that the union cost a worker money.

Generally, the five-person NLRB establishes or changes federal labor relations policy through decisions in labor disputes, rather than through rulemaking. The NLRB often makes decisions based upon cases which have been litigated through the various levels of the NLRB by the General Counsel's office.

General Counsel Robb has a record of issuing enforcement guidance that makes grievance-handling more difficult for labor unions. In September 2018, he issued guidance to regional attorneys to more closely examine unions' claims that they acted with "mere negligence," which can be used as a defense in duty of fair representation cases.

GOVERNOR CUOMO ADDS THREE MORE STATES TO COVID-19 TRAVEL QUARANTINE LIST

As COVID-19 cases continue to surge across the country, Governor Andrew Cuomo has added three more states to the travel advisory that requires individuals traveling from those states to quarantine for 14 days upon arrival. Delaware, Kansas and Oklahoma have been added to the travel advisory list. Travel advisory previously applied to travelers from: Alabama, Arkansas, Arizona, California, Florida, Georgia, Iowa, Idaho, Louisiana, Mississippi, North Carolina, Nevada, South Carolina, Tennessee, Texas and Utah.

Inclusion in the travel advisory list is based upon a seven-day rolling average, of positive COVID-19 tests in excess of 10%, or number of positive COVID-19 cases exceeding 10 per 100,000 residents.

New York State will update the list online as COVID-19 data changes. This is a link to the website: <https://coronavirus.health.ny.gov/covid-19-travel-advisory#restricted-states>.

**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

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