



# Trump Terminates NLRB Member Wilcox and General Counsel Abruzzo – What Employers Need to Know

Insights

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In a series of swift and game-changing moves, President Donald Trump summarily dismissed National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo and Board Member Gwynne Wilcox late last night. While Abruzzo's dismissal was widely anticipated, the unprecedented dismissal of Member Wilcox has raised significant procedural and policy questions for the federal labor agency in the short term and beyond. What do employers need to know about these two key moves?

## What Happened?

Both Abruzzo and Wilcox were key figures at the NLRB under the previous administration.

- Abruzzo, viewed as one of President Joe Biden's most progressive appointments, served as General Counsel – a role with broad prosecutorial discretion over labor law violations in the private sector. She pursued a more expansive view of workers' rights, tackling issues such as restrictions on "Black Lives Matter" insignia, noncompete clauses, so-called "captive audience" meetings, and the employment status of student-athletes. Deputy General Counsel Jessica Rutter will serve as Acting GC pending further action from the White House.
- Wilcox was confirmed in September 2023 to a second term set to expire in 2028. She briefly served as the Board's chair during the final days of the Biden Administration.

President Trump had long been expected to fire Abruzzo, mirroring President Biden's Inauguration Day termination of Trump's first-term General Counsel, Peter Robb. However, Trump's decision to remove Wilcox is unprecedented. In the nearly 90 years since passage of the NLRA, the president has never terminated a member of the Board. In contrast, federal appeals courts have largely affirmed the president's authority to remove the NLRB's General Counsel at will. Wilcox has already indicated she will pursue legal avenues to contest her ouster – so we'll monitor whether this termination sticks or is overturned by a court.

## What Do These Moves Mean?

The immediate impact of these firings is twofold.

First, **the Board's membership is now reduced to two**: Republican Chair Marvin Kaplan and Democratic Member David Prouty. The NLRB requires a three-member quorum to issue decisions – a threshold established by the U.S. Supreme Court in 2010. With only two members seated, the Board cannot currently adjudicate cases or set new legal precedent. This stalemate could significantly slow or even halt NLRB decision-making (and rulemaking) until new members are appointed and confirmed.

Second, **Wilcox's removal is likely to spark further legal challenges**. While courts have recognized the president's power to remove certain independent agency heads (particularly those with single-director structures), whether the president possesses unfettered at-will removal authority over multi-member boards like the NLRB is subject to ongoing legal disputes.

Many businesses have argued with success in recent years that such statutory tenure protections are an unconstitutional infringement on executive power. Wilcox's case may become a major flashpoint for that continuing debate, with the outcome potentially reshaping the contours of executive authority over independent agencies.

### **Big-Picture Implications for Employers**

For employers, these dramatic changes could introduce uncertainty in labor law enforcement. On one hand, the absence of a fully functioning Board means pending unfair labor practice cases and to a lesser degree representation proceedings may languish, delaying potential liabilities or penalties.

On the other, a new Republican majority at the NLRB – assuming nominations for vacancies are confirmed through the Senate's advice and consent process – may revisit and reverse key precedents established during the Biden administration on issues such as joint employer status, worker classification, employer handbook policies, and protected concerted activity.

Meanwhile, with the General Counsel's office in transition, the tone and direction of investigations and prosecutions should shift significantly away from its recent pro-labor stance once a full-time successor is appointed and confirmed.

### **Potential Shifts in Enforcement Priorities**

President Trump's termination of Abruzzo clears the way for a new General Counsel appointment, likely more aligned with a business-focused perspective. During his first term, Trump's General Counsel, Peter Robb, advanced a narrower view of "employee" status under the NLRA, confirmed that gig workers were independent contractors outside the scope of federal labor law, and supported broader employer authority over employee activities.

Employers could thus see:

- **Less aggressive prosecution** of alleged unfair labor practices involving workplace protests, social media policies, and mandatory meetings.
- **A renewed focus on employee classification** that might favor independent contractor designations.
- **Greater deference to employer policies** regarding civility rules, non-solicitation, and noncompete clauses.

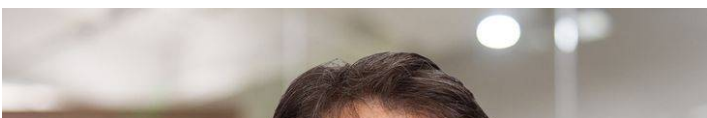
## Best Practices for Employers Moving Forward

- **Monitor NLRB Developments:** With the Board now lacking a quorum, expect limited adjudicatory activity in the short term. But you should remain alert for administrative, rulemaking, or interim guidance from the new General Counsel once they are appointed. The best way to stay tuned is subscribe to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox.
- **Review Current Labor Policies:** Examine your employee handbooks, work rules, and disciplinary procedures to confirm they meet the most recent NLRB standards. A management-friendly Board is expected to moderate the more extreme decisions from the Biden Board, but that transition will take time.
- **Maintain Open Communication With Employees:** In an environment of uncertainty, clear and regular communication helps prevent misunderstandings or union-related escalation. Reinforce any open-door policies, encourage feedback, and foster a positive workplace culture to reduce the appeal of organizing efforts.
- **Evaluate Positive Employee Relations and Bargaining Strategies:** The unpredictable nature of future Board composition and decisions means that you should ensure your positive employee relations strategies remain legally compliant. If you are already unionized or facing union organization, anticipate that a new GC or new Board majority could revisit some of the Biden-era interpretations on bargaining obligations and employer defenses.

## Conclusion

This is a developing story. We will continue to monitor this and related issues and provide updates when necessary, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox. If you have any questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Labor Relations Group](#) or [Government Relations Group](#).

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