



"I Wish I Didn't Know Now What I Didn't Know Then"

Against the Wind ; 1980, Bob Seger and the Silver Bullet Band

Presented By:
James N. Foster, Jr.
McMahon Berger, P.C.
2730 N. Ballas Road, Suite 200
St. Louis, Missouri 63131
314-567-7350



Federal Update

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 25-05

February 14, 2025

TO: Regional Directors, Officers-in-Charge, and Resident Officers

FROM: William B. Cowen, Acting General Counsel

SUBJECT: Rescission of Certain General Counsel Memoranda

Over the past few years, our dedicated and talented staff have worked diligently to process an ever-increasing workload. Notwithstanding these efforts, we have seen our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing.

Since assuming the role of Acting General Counsel, working with experienced field and headquarters professionals, I have conducted a comprehensive review of active General Counsel Memoranda and determined that the following actions are warranted.

A. The following General Counsel Memoranda are rescinded:

- GC 21-02 Rescission of Certain General Counsel Memoranda
- GC 21-03 Effectuation of the National Labor Relations Act Through Vigorous Enforcement of the Mutual Aid or Protection and Inherently Concerted Doctrines
- GC 21-04 Mandatory Submissions to Advice



- GC 21-08 Statutory Rights of Players at Academic Institutions (Student Athletes) Under the National Labor Relations Act
- GC 22-06 Update on Efforts to Secure Full Remedies in Settlements (Revised Attachment)
- GC 23-02 Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights
- GC-23-04 Status Update on Advice Submissions Pursuant to GC Memo 21- 04
- GC 23-05 Guidance in Response to Inquiries about the *McLaren Macomb* Decision
- GC 23-08 Non-Compete Agreements that Violate the National Labor Relations Act
- GC 24-04 Securing Full Remedies for All Victims of Unlawful Conduct+
- GC 24-05 Injunctive Relief and the U.S. Supreme Court's Decision in *Starbucks Corp. v. McKinney*
- GC 24-06 Clarifying Universities' and Colleges' Disclosure Obligations under the National Labor Relations Act and the Family Educational Rights and Privacy Act
- GC 24-06 Attachment
- GC 25-01 Remediating the Harmful Effects of Non-Compete and "Stay-or-Pay" Provisions that Violate the National Labor Relations Act
- GC 25-02 Ensuring Settlement Agreements Adequately Address the Public Rights at Issue in the Underlying Unfair Labor Practice Allegations

B. The following General Counsel Memoranda are rescinded pending further guidance:

- GC 21-05 Proceedings
- GC 21-06 Seeking Full Remedies
- GC 21-07 Full Remedies in Settlement Agreements
- GC 22-01 Ensuring Rights and Remedies for Immigrant Workers Under the NLRA
- GC 22-02 Injunctions in Response to Unlawful Threats or Other Coercion During Union Organizing Campaigns
- GC 22-03 Inter-agency Coordination
- GC 22-05 Goals for Initial Unfair Labor Practice Investigations
- GC 23-01 Aspect of Cases Warranting Interim Relief
- GC 23-07 Procedures for Seeking Compliance with and Enforcement of Board Orders
- GC 24-01 (Revised) Guidance in Response to Inquiries about the Board's Decision in Cemex Construction Materials Pacific, LLC
- GC 25-03 New Processes for More Efficient, Effective, Accessible and Transparent Case handling
- GC 25-04 Harmonization of the NLRA and EEO Laws

- C. The following General Counsel Memorandum is rescinded as no longer relevant considering the Board's Decision in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024):
 - GC 22-04 The Right to Refrain from Captive Audience and other Mandatory Meetings
- D. The following General Counsel Memorandum is rescinded and the guidance in GC 18-01 is restored:
 - GC 23-03 Delegation to Regional Directors of Section 102.118 Authorization Regarding Record Requests from Federal, State, and Local Worker and Consumer Protection Agencies
- E. The following General Counsel Memorandum is rescinded as COVID-19 is no longer a Federal Public Health Emergency
 - GC 21-01 Guidance on Propriety of Mail Ballot Elections, pursuant to *Aspirus Keweenaw*, 370 NLRB No. 45 (2020)

I believe that it is incumbent upon all government leaders to continuously examine what we are doing and why we are doing it in order to explore ways to improve our service to the public. Thus, my review of our practices is ongoing, and I anticipate that further adjustments will be made as needed.

/s/ W.B.C.

Administrative Agency Personnel Decisions

- Department of Labor
- Former US Rep. Lori Chavez-DeRemer (R-OR.)
- Chavez-DeRemer is a pro-labor, pro-union member of the GOP
- Supported PRO Act, other pro-worker legislation.
- Has received praise from union leaders, but questions remain.
- National Labor Relations Board
- Trump Administration fired Board Member Gwynne Wilcox, leaving Board without a quorum.
- A federal judge reinstated Wilcox, restoring the required three-member quorum to resume certain activities. The Trump administration has appealed the decision to reinstate her.
- Marvin Kaplan, the National Labor Relations Board's sole Republican member, as the agency's chair.
- Crystal Carey, nominated to be National Labor Relations Board General Counsel.
- William Cowen, acting GC.
- Equal Employment Opportunity Commission
- Andrea Lucas, the EEOC's remaining GOP member, as the agency's acting chair.
- Andrew Rogers serves as acting General Counsel.

BIG PICTURE

- Where do Union's Go From Here?
- What is Happening on Other Fronts ...
Such as Arbitrations?
- What is Happening With Disgruntled Employees?

Missouri Update

Proposition A – Update on Efforts to Roll Back

- Missouri Supreme Court Challenges
- A coalition of business groups have challenged Proposition A in the Missouri Supreme Court, arguing that it violates the single-subject rule set forth in the Missouri Constitution by combining minimum wage and paid sick leave, contains an incomplete and misleading fiscal note, and features deceptive ballot language.
- Missouri Legislative Challenges
- HB567 was passed in the Missouri House of Representatives on March 13.
- Keeps the original \$15 minimum wage increase, which will go into effect January 1, 2026, but eliminates annual inflationary increases to the minimum wage.
- Completely repeals all paid sick time provisions.
- The Emergency Clause did not receive enough votes in the House, therefore Proposition A still will go into effect on May 1, requiring employers to comply with its sick pay provisions from May 1 to August 28.
- HB567 is currently in the General Laws Committee of the Missouri Senate.
- If the Senate makes revisions, which McMahon Berger fully expects it to do, the bill will have to return to the House for final approval, and, if approved, go to the Governor's desk for his signature.

Childcare Tax Credits

- HB 269 was pre-filed on December 2, 2024, with an aim to “increase the capacity of childcare providers and help businesses offer childcare benefits to support the retention and recruitment of employees.”
- Following an executive session on April 15, 2025, the bill was reported as Do Pass on April 24, 2025.
- The bill provides three components:
- Child Care Contribution Tax Credit: 75% tax credit for businesses and individuals who donate to a licensed childcare provider.
- Employer-Provided Child Care Assistance Tax Credit: Offers a 30% tax credit for employers who provide on-site or off-premises childcare for their employees.
- Child Care Providers Tax Credit: Offers a credit to childcare providers for employee payroll tax withholdings or capital improvements.
- A companion bill, SB 455, passed through committee on April 1, 2025.

Illinois Update

Illinois Employment Laws

Effective January 1, 2025

- The Illinois Personnel Record Review Act (IPRRA) requires Employers (with 5 or more employees to remit employees, including former employees terminated within the preceding year) to review, copy or obtain copies of records twice per calendar year. The law was amended to expand the list of documents Employers must provide.
- Expanded pay stub requirements – The Illinois Wage Payment and Collection Act (IWPCA) was amended to find a “paystub” and specify that such a paystub must be provided to each employee for each pay period. New record keeping obligations are in effect as of January 1, 2025, as employers will be required to keep paystubs for all employees including terminated employees for at least 3 years.
- The Illinois Whistleblower Act (IWA) clarified the definition of a “Employee” and added a “Good Faith” requirement for reports of alleged unlawful activity while also expanding protections for alleged Whistleblowers. The IWA provides that anyone other than an independent contractor that is “permitted to work” by employer is a “Employee”. References on employees were also added to the Act as well as the clarification of “Retaliatory Action”.

Illinois Employment Laws

Effective January 1, 2025

- The Illinois Freedom to Work Act (IFWA) was amended by two separate bills both taking effect on New Years Day January 1, 2025. This includes a ban on non-competes for licensed professionals who provide mental health services and First Responders. The second Amendment prevents Illinois employers from entering a non-compete or non-solicitation agreements with construction workers regardless of whether they are covered by a Collective Bargaining Agreement.
- The Illinois Human Rights Act (IHRA) effective January 1, 2025, was amended to expand the scope of its protected class and to also prohibit employers from taking adverse action against an employee or prospective employee based upon any employees “family responsibilities”. The definition of pregnancy was also expanded.

Illinois Employment Laws

Effective January 1, 2025

- The Illinois Child Labor Law was revised and replaced with a Comprehensive Child Labor Law of 2024 (CLL). The CLL covers minors under 16 years of age and is intended to provide “The greatest protection of a minor’s well being”. The CLL now specifies allowable work hours for minors. They generally can not:
 - Work more than 18 hours during the week when school is in session.
 - Work more than 40 hours during the week when school is not in session.
 - Work more than 8 hours at any single 24-hour period.
 - Work between 7:00 pm and 7:00 am from Labor Day to June 1 or between 9:00 pm and 7:00 am from June 1 until Labor Day.
 - They are prohibited from working 5 consecutive hours without a minimum of a 30-minute meal break.

Illinois Employment Laws

Effective January 1, 2025

- Transparency Required in Job Postings:
 - Pay scale and job benefits must be disclosed: Effective January 1, 2025, Employers with 15 or more employees must disclose “pay scale and benefits” in all job postings for jobs that will be performed, at least in part, Illinois as well as those performed outside of Illinois if the employee will report to a supervisor, office, or other work site located in Illinois.
- The Illinois Captive Audience Law - The New Illinois Worker Freedom of Speech Act (WFSA) makes Illinois the latest of numerous jurisdictions to ban so called “Captive Audience Meetings”. The WFSA prohibits employers from taking, or threatening to take, adverse action against employees who decline to attend or take part in an employer-sponsored meeting about the employer’s religious or political opinions.

Illinois Developments

- Minimum wage increase from \$14.00 to \$15.00 per hour
- Job postings by employers with 15+ employees must include pay scale and benefit information
- Provide pay stubs each pay period with hours worked, pay rates, overtime pay, and deductions from wages.
 - Retain for 3 years
- Expansion of Illinois Personnel Record Review Act to include additional documents that must be disclosed
 - Provides employees with access to documents used or intended to be used to determine employment actions (hiring, promotion, etc.), discipline, or compensation.
 - Employees must satisfy certain basic requirements in their requests, including a limit of two requests per year, making requests only at “reasonable intervals,” and paying the cost of the duplication, if required by the employer.

Illinois Developments

- Expansion of Illinois Whistleblower Act broadens definition of employee, requires a good faith belief by the employee, and expands definition of adverse action
 - Broadens the scope of protected employee activity to include an employee's internal report of (threat to report) legal violations and substantial risks to employees, public health, or safety.
 - Prohibits employers from taking retaliatory action against employees who disclose or threaten to disclose information related to an employer's activity, policy, or practice, which the employee believes in good faith to violate a law, rule, or regulation, or pose a substantial and specific danger to employees, public health, or safety.
- Expansion of Illinois Human Rights Act to include family responsibilities and reproductive health decisions
 - "Family responsibilities" includes the actual or perceived provision of personal care to a family member.
 - The time to file a discrimination complaint with the Illinois Department of Human Rights (IDHR) has been extended from 300 days to two years from the date of the alleged discrimination.

Trump Administration's Recission of Biden-era Executive Orders

- “Initial Rescissions of Harmful Executive Orders and Actions”
- Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government);
- Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation);
- Executive Order 13993 of January 20, 2021 (Revision of Civil Immigration Enforcement Policies and Priorities);
- Executive Order of 13999 of January 21, 2021 (Protecting Worker Health and Safety); Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council);
- Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders);
- Executive Order 14055 of November 18, 2021 (Non-displacement of Qualified Workers under Service Contracts); and
- Executive Order 14075 of June 15, 2022 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals) among many others.
- Both state and federal laws continue to prohibit discrimination based on these characteristics. *Bostock v. Clayton County*, 590 U.S. 644 (2020).
- Discrimination based on gender identity or sexual orientation is sex discrimination and violates Title VII.

Trump Administration's Recission of Biden-era Executive Orders

- Recission of Executive Order 14110 “Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”
 - Required developers of large AI models like OpenAI’s GPT lineup to share the results of safety tests with the US government.
 - Directed the National Institute of Standards and Technology to develop standards for safety testing, and it tasked other federal agencies with assessing any potential chemical, biological, radiological, nuclear, cybersecurity, or critical infrastructure risks AI might pose.
 - Outlined measures for evaluating and mitigating potential biases and discrimination facilitated by AI technologies.

Trump Administration's Executive Orders

- “Return to In-Person Work”
 - “Hheads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.”
 - Contrary to other executive orders, no timetable for completion.
 - Trump has stated that any employee that fails to comply with a directive ordering the employee back to in-person work would result in their termination.

Trump Administration's Executive Orders

- “Hiring Freeze”
 - Freezes hiring of “Federal civilian employees” in the executive branch
 - No Federal civilian position that is vacant at noon on January 20, 2025, may be filled.
 - No new position may be created .
 - Freeze applies to all executive branch departments and agencies .
 - Does not prohibit making “reallocations” to meet the “highest priority needs, maintain essential services, and protect national security, homeland security, and public safety.”
 - Does not limit the nomination and appointment of officials to positions requiring Presidential appointment or Senate confirmation, the appointment of officials to non-career positions or to Schedule A or C positions (policy positions that change from administration to administration).
 - Freeze has no definite length.
- Orders OMB, OPM, and DOGE to submit a plan to reduce the size of the Federal Government’s workforce through efficiency improvements and attrition.
- Upon issuance of the plan, this memorandum shall expire for all executive departments and agencies, with the exception of the Internal Revenue Service (IRS).

Trump Administration's Executive Orders

- “Regulatory Freeze Pending Review”
 - Orders Executive branch agency and department heads to refrain from proposing or issuing any rule or regulation until the respective “department or agency head appointed or designated by the President” reviews and approves such rule.
 - Does not apply to rules or regulations deemed “necessary to address emergency situations or other urgent circumstances, including rules subject to statutory or judicial deadlines that require prompt action.”
 - 60 day “postponement”
 - Effective dates of new rules and regulations published in Federal Register postponed for 60 days “to allow interested parties to provide comments about issues of fact, law, and policy raised by the proposed rule.”

Trump Administration's Executive Orders

- “Protecting the Meaning and Value of American Citizenship”
 - 14th Amendment of the US Constitution grants citizenship to people “born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”
 - Traditionally interpreted to include all children born in the US irrespective of their parents’ immigration status.
 - If at least one parent was not a “lawful permanent resident at the time of said person’s birth”, the child cannot claim birthright.
 - Affects children of workers in the US who are here on H1B, which is a temporary work visa.
 - H1B holders may obtain green cards, but children born prior to green card status would not obtain birthright citizenship.
 - In 2019, approximately 600,000 people in US on H1B visa, quadrupled since 1991.
- 22 states have already sued to challenge the EO, 4 current injunctions.

Trump Administration's Executive Orders

- “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
 - Laws and practices shall refer to only “sex” and not “gender.”
 - Sex is deemed to be determined biologically at the time of conception: male or female.
 - Directs all agency heads to rescind all contrary guidance and to report an update on the implementation.
 - Geared toward federal government communications and internal policy.
 - *Bostock*

Trump Administration's Executive Orders

- “Ending Radical And Wasteful Government DEI Programs And Preferencing”
 - Directs the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) to terminate “all discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear.”
 - Including “environmental justice offices and positions (including but not limited to “Chief Diversity Officer” positions); all “equity action plans,” “equity” actions, “equity-related” grants or contracts; and all DEIA performance requirements.”
 - OPM Director is ordered to review and revise “all existing Federal employment practices, union contracts, and training policies or programs to comply with this order.”
 - For individual federal employees, performance reviews and employment practices are intended to “reward individual initiative, skills, performance, and hard work and shall not under any circumstances consider DEI or DEIA factors, goals, policies, mandates, or requirements.”

Trump Administration's Executive Orders

- “Restoring Accountability to Policy-Influencing Positions within the Federal Workforce”
 - Reinstates Executive Order 13957 (Creating Schedule F in the Excepted Service), subject to amendments.
 - “Drain the swamp.”
 - Schedule F (now labeled Policy/Career) employees are employees whose position has been determined to be of a “confidential, policy-determining, policy-making or policy-advocating character not normally subject to change as a result of a Presidential transition.”
 - Renders Schedule F jobs as “noncompetitive,” removes protections of Civil Service Rules and Regulations from Schedule F employees.
 - Easier to terminate career bureaucrats who maintain their positions across administrations.
 - The National Treasury Employees (NTEU) has filed suit challenging the order.
 - Argue that requirement of civil service law that empowers the president to remove job protections for career agency staff if “conditions of good administration warrant,” has not been met.

Trump Administration's Executive Orders

- “Reforming The Federal Hiring Process And Restoring Merit To Government Service”
 - Seeks to reform the federal hiring process, emphasizing merit-based decisions over political considerations.
 - Orders OMB, OPM, the Assistant to the President for Domestic Policy, and the Administrator of the Department of Government Efficiency to develop and send to agency heads “a Federal Hiring Plan that brings to the Federal workforce only highly skilled Americans dedicated to the furtherance of American ideals, values, and interests.”
 - Numerous streamlining objectives that seek to speed up and modernize federal employee hiring practices.
 - No reinstatement of federal service entrance exam.

Trump Administration's Executive Orders

- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
 - DOL’s Office of Federal Contract Compliance Programs (OFCCP) polices some of the largest US companies that do work for the federal government.
 - OFCCP must immediately stop promoting diversity and affirmative action, and cease “allowing or encouraging” contractors and subcontractors to engage in “workforce balancing” based on race, sex, color, religion, national origin, and “sexual preference.”
 - Rescinded EO 11246, which in 1965 established key portions of the OFCCP’s authority to audit contractors for compliance or conduct complaint investigations.
 - The agency separately has the power to enforce statutes that protect veterans and workers with disabilities.



Thank you!

James N. Foster, Jr.
McMahon Berger, P.C.
2730 N. Ballas Road, Suite 200
St. Louis, Missouri 63131
314-567-7350
foster@mcmahonberger.com

