

OSHA and NLRB Partner To Promote Safe and Healthy Workplaces

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PRACTICES OSHA, Employment Litigation, Labor and Employment

On Oct. 31, 2023, National Labor Relations Board's ("NLRB") General Counsel Jennifer A. Abruzzo and Assistant Secretary of Labor for OSHA at the U.S. Department of Labor Douglas L. Parker executed a [Memorandum of Understanding](#) ("MOU") to strengthen the agencies' partnership to promote safe and healthy workplaces. The MOU took immediate effect.

The MOU aims to "facilitate interagency cooperation and coordination" between the NLRB and OSHA by "establishing a process for information sharing and referrals, training, and outreach between the agencies" concerning the National Labor Relations Act (NLRA), the Occupational Safety and Health Act of 1970 (OSH Act), the OSH Act's anti-retaliation provisions and "any current and future statutory protections which OSHA is charged with enforcing, including various whistleblower provisions". See [Memorandum of Understanding](#).

The NLRB and OSHA will now join forces in these primary areas:

- **Information Exchange**: Either at the request or upon the respective agency's own initiative, any information or data that supports each agency's enforcement mandates, may be shared between OSHA and the NLRB. This may include complaint referrals and other sharing of information in complaint or investigative files relating to alleged violations of the NLRA and laws enforced by OSHA. The Agencies have stated that this information exchange will only occur "after a careful review and determination from the supplying agency that the information is both relevant and necessary to the recipient agency's enforcement responsibilities and that the information will be used in a manner that is compatible with the purposes for which the agency collected the records".
- **Coordinate Investigations and Enforcement**: The agencies will determine whether to conduct coordinated investigations and inspections. Where overlapping violations are found by both OSHA and the NLRB, the agencies will explore what enforcement actions are appropriate for each agency to undertake.
- **Training, Education, and Outreach**: To implement the MOU, both agencies will provide cross agency training. For example, "[t]he NLRB shall train appropriate OSHA personnel on what constitutes concerted activity under section 7 of the NLRA, what constitutes an unfair labor practice under section 8(a) of the NLRA, and on the basic procedures for investigating and adjudicating unfair labor practice charges. OSHA shall train appropriate NLRB personnel on OSHA standards, recordkeeping and reporting regulations, the general duty clause, and employee rights that are protected under section 11(c) of the OSH Act and other whistleblower provisions of OSHA". The agencies have stated that they may also engage in joint public engagement, outreach, and education.

The MOU will remain in effect for five years. During the effective period, employers should remain mindful that their communications and other exchanges with one agency may be accessible to the other agency, and therefore it would be prudent to carefully review such information prior to communicating that to either agency.