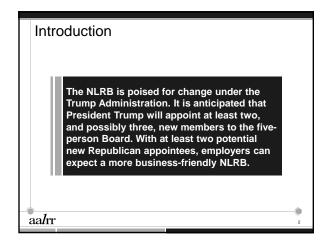




Agenda	
Introduction Composition Of The NLRB Enforcement Initiatives Election Rules Electronic Signature Cards Expanded Employee Rights Forecasts of the NLRB The Current State of the NLRB	
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Composition of The NLRB
Poised to have a Republican Majority in the New Administration
Functions of the NLRB
The Role of General Counsel of the NLRB
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General Counsel Enforcement Initiatives

- New General Counsel is Likely to Abandon Some Current Enforcement Initiatives
- McDonald's Unfair Labor Practice Litigation
- Walmart Intermittent Strike Litigation
- U.S. Supreme Court ruling in NLRB v. SW General, Inc., Case 15-1251 (March 21, 2017) and Impact on Policy Initiatives Begun Under Former "Acting General Counsel"

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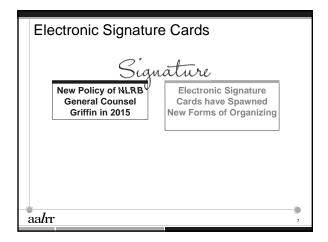
Class Action Waivers in Arbitration

- D.R. Horton, Inc. (2012) 375 NLRB 184
- Murphy Oil USA (2014) 361 NLRB No. 72
- Countrywide Financial Corp. (2015) 362 NLRB No 165
- Split in Federal Appellate Court Decisions Concerning Class Action Waivers
- The Supreme Court Will Decide Validity of Class Action Waivers under the NLRA in the Next Term

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Quickie Election Rules In December 2014, the NLRB implemented its Final Rule on Quickie Elections. The Quickie Election Rules, which went into effect in April 2015 are regulations that sped up the union election process. The Quickie Election Rules have not had much impact on the number of elections or union win ratio.



Handbooks
 ✓ Current NLRB Highly Regulatory of Employee Handbook Provisions ✓ Hills and Dales General Hospital (2014) 360 NLRB No. 70
✓ Direct T.V. (2013) 359 NLRB No.4 ✓ Handbook Rules Likely Deemed Lawful by NLRB under
Trump Administration ✓ Social Media Policies Likely Deemed Lawful by the NLRB Under the Trump Administration
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Expanded Employees' Rights Regarding Company Email

• Purple Communications (2014) 361 NLRB No. 126

Forecast Under the Trump Administration. It is expected that the NLRB will be called upon to revisit and clarify the Purple Communications ruling to prevent interference with the business of employers nationwide

Substantial Limits on What Constitutes Social Media Misconduct



- NLRB highly protective of employee posts on social media.
- Triple Play Sports Bar and Grille (2014) 361 NLRB No. 31
 - Termination for Facebook posting about management withholding practices
- Pier Sixty (2015) 362 NLRB No. 59
 - Posted a message on personal Facebook page about manager and union vote

Forecast Under the Trump Administration: It is expected that the NLRB will hold that corporate disparagement not connected to a strike will be grounds for discipline. The NLRB will most likely allow an employer to discipline employees based on the business interest of its public image over social media.

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NLRB Expanded Joint Employer Liability

- Browning-Ferris held that an employee can establish joint employer status by either
 - The alleged joint employer reserved authority to control the terms and conditions of employment; or
 - Exercised indirect control over the terms and conditions of employment.

<u>Forecast Under the Trump Administration</u>: It is anticipated that the NLRB will revisit its holding in Browning-Ferris and hold that direct and immediate control over terms and conditions of employment will be required.

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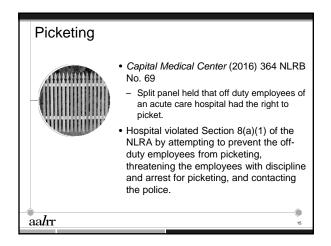


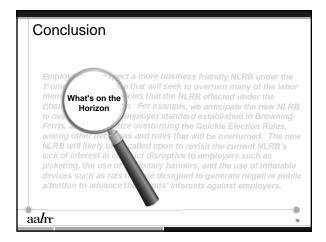
Creation of Micro-Unions Specialty Healthcare (2011) 357 NLRB No. 83 NLRB made it substantially easier to unionize workplaces Creation of "micro-unions" or the unionization of sub-units of a workforce. Forecast Under the Trump Administration: Expect the new NLRB to revisit its decision in Specialty Healthcare and overrule the approval of micro-units as a collective bargaining unit.

Piedmont Gardens (2015) 362 NLRB No. 139 NRLB held employer must provide witness statements obtained by the employer in response to a union request for information pursuant to a grievance investigation Forecast Under the Trump Administration: Forecast Under the Trump Administration: Expect a reversal of this rule by the NLRB.

Protected Concerted Activity ("PCA") • Fresh & Easy Neighborhood Market, Inc. (2014) 361 NLRB No. 12 - Employee who requested help from coworkers in preserving evidence for sexual harassment complaint was engaged in "concerted activities" for mutual aid and protection under Section 7 of the NLRA. Forecast Under the Trump Administration: Expect reversal of this broad definition of "protected concerted activity." We anticipate the NLRB will revisit its holding in Fresh & Easy and limit the terms "protected concerted activity" activity to related to unionization, bargaining, or a "group grievance" of working conditions. aalrr 14











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