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President Biden initiates pro-labor shift at the National Labor Relations Board by terminating the Board's General Counsel and Acting General Counsel

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On his first day in office, President Biden broke with historical precedent by terminating National Labor Relations Board (NLRB) General Counsel Peter Robb, after Mr. Robb refused the President's request to resign. Former President Donald Trump appointed Mr. Robb, a management side labor lawyer, in 2017. Mr. Robb's four-year appointment was set to expire in November of this year. In a related move on the same day, President Biden also named Lauren McFerran, the NLRB's sole Democratic member, as Chair of the Board. The following day, the President fired the Deputy General Counsel, Alice Stock, who had become Acting General Counsel upon the firing of Mr. Robb. Ms. Stock, also a management side labor lawyer, likewise had refused the President's request that she resign.

The removal of the NLRB's top lawyers signals a major shift in national labor policy, and indicates the power that labor unions will have in the new Administration.

The NLRB General Counsel has a significant role in shaping federal labor policy. The General Counsel directs the investigation and prosecution of unfair labor practice cases and therefore determines which cases are presented to and pursued by the agency. Mr. Robb pursued a pro-business agenda, which included employer-friendly interpretations of the National Labor Relations Act. Some of the recent decisions of the Board overturned labor-friendly decisions issued by the Board under President Obama. Labor unions have been pushing hard for Mr. Robb's ouster since the November presidential election.

With the firing of both Peter Robb and Alice Stock, the NLRB's legal department is left leaderless. While the General Counsel position remains vacant, President Biden has the authority to appoint an Acting General Counsel or wait for the Senate to confirm a person he nominates for the job. We expect that the President will choose pro-labor replacements for both Mr. Robb and Ms. Stock. Large national unions have their favorite replacement candidates and are pushing for their selection.

The immediate removal of Peter Robb and Alice Stock portends a redirection of the NLRB away from the more business-friendly stance it took during Trump's time as President. President Biden

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also will have the opportunity to change the balance of power on the NLRB itself by filling vacancies that will occur during his first term: one of the five Board seats is currently vacant, and the terms of two of the sitting Republican members will expire within the next two years. These changes in the composition of the Board will then facilitate a reversal of more recent pro-employer NLRB decisions. A reconstituted NLRB also may make regulatory changes designed to encourage quicker and easier union organizing of employees and quicker and easier union elections. If Congress then passes the PRO Act or other legislation making it easier for unions to organize, there will have been a sea change in the federal labor arena.

In the interim, watch for litigation contesting President Biden's authority to remove both the General Counsel and the Acting General Counsel and related challenges to any decisions issued by the NLRB during the remainder of what would have been Peter Robb's term (i.e., January 20, 2021, through November 2021).

Employers should take this opportunity to consider their vulnerability to union organizing and work with their labor counsel to prepare for the coming changes.

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