

Double Trouble? What Employers Can Expect from the Five-Year Collaboration Between the Department of Labor and the National Labor Relations Board



By [Janet A. Hendrick](#) and Rodney R. Hester

For the next five years, employers will be subject to combined investigation and enforcement efforts by the U.S. Department of Labor's Wage and Hour Division ("WHD") and the National Labor Relations Board ("NLRB"). [The December 2021 Memorandum of Understanding](#) ("MOU") between these agencies explains that the initiative is meant to "maximize and improve the enforcement of the federal laws administered" by the two agencies.



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What can employers expect through this collaboration? As a quick refresher, the WHD enforces the Fair Labor Standards Act, which, among other things, establishes requirements for overtime pay and the minimum wage. The NLRB enforces the National Labor Relations Act, which gives private sector workers the rights to organize, bargain collectively, and otherwise engage in concerted activities to improve pay and working conditions. And as a reminder, the NLRA applies to most employers, regardless of whether the workplace is unionized.

One priority of the MOU is information-sharing between the agencies, “whether obtained in the course of an investigation or through any other sources to the extent permitted by law.” We can expect information to flow back and forth between the agencies when common issues arise “particularly in the areas of unlawful compensation practices, such as denial of minimum wages or overtime pay, and retaliation based on exercising rights guaranteed under the NLRA or laws enforced by WHD.”

Understandably, this is a cause for concern among employers, given the power even a single federal agency yields. Some comfort comes from limits in the MOU, which states that “information transferred ... shall not be used by the receiving agency for purposes other than enforcement of laws enforced by the receiving agency.” Of course, only time will tell as to what this means in practical terms.

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and employment laws.

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