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HIGHLIGHTS

- The DOL's GC issued an internal memorandum instructing agency attorneys to prioritize enforcement of federal labor and employment laws in nonunion workplaces.
- According to the memorandum, unions are better positioned to evaluate and address harms to workers in unionized workforces.
- The internal memorandum highlights a shift in the DOL's enforcement priorities.

DOL General Counsel Shifts Enforcement Efforts to Nonunion Workplaces

The U.S. Department of Labor's (DOL) General Counsel (GC) Jonathan Berry issued an internal memorandum instructing agency attorneys to prioritize enforcement of federal labor and employment laws in nonunion workplaces. The memorandum promises to provide maximum clarity about employers' legal obligations.

Key Highlights

The memorandum directs that the agency's enforcement efforts should not prioritize workplaces covered by collective bargaining agreements offering adequate and regularly implemented remedies. According to the memorandum, unions are better positioned to evaluate and address harms to workers in unionized workforces, especially where employees have a federal private right of action to address labor and employment law violations. However, where there is evidence that a union is not fairly representing worker grievances or where contractual remedies are inadequate to resolve violations, this presumption can be suspended.

The memorandum directs DOL attorneys to target cases with many workers and closely scrutinize major employers whose market power permits them to dominate their respective labor markets. This approach seeks to use the DOL's limited resources in the most effective way. The agency will also prioritize cases involving trafficking and repeat violators.

The memorandum aims to increase employer compliance by providing maximum clarity about DOL-enforced laws through careful regulatory drafting and ample advisory content.

Employer Takeaway

The GC internal memorandum provides an early indication of how the DOL intends to prioritize enforcement actions. Nonunion employers may see an increase in DOL enforcement actions as the agency shifts focus from unionized to nonunion workplaces. Employers should take steps now to ensure they comply with federal labor and employment law.