

RISK & COMPLIANCE JOURNAL

# The Morning Risk Report: NLRB Memo Brings Questions to Codes of Conduct

By Ben DiPietro

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A memo from the Trump-appointed general counsel of the National Labor Relations Board suggests the agency may take a new approach to issues related to employee handbooks and codes of conduct, including the question of what constitutes disrespectful workplace conduct. Joseph Murphy, author of the book “501 Ideas for Your Compliance and Ethics Program,” said the memo from NLRB General Counsel Peter B. Robb said some issues resulting in an enforcement action in the previous administration may now be looked at differently, including rules prohibiting disrespectful workplace conduct.

“In the memo he talks about issues that, if these come up, we might enforce them but we might take a different approach,” said Mr. Murphy in an interview. The memo tells agency field personnel: ‘Don’t go on the old course...you can’t charge ahead,’ said Mr. Murphy. “Come to me before you go to the board to ask for a complaint,” he said. The memo, Mr. Murphy said, rescinded Obama administration guidance on the agency’s approach to employee codes of conduct that concluded general language prohibiting disrespectful conduct could be seen as an unfair labor practice. The Obama-era memo says: “A rule that prohibits employees from engaging in ‘disrespectful,’ ‘negative,’ ‘inappropriate,’ or ‘rude’ conduct towards the employer or management, absent sufficient clarification or context, will usually be found unlawful.”

That approach placed organizations in a bind, as they had to be careful how they spelled out their policies about respect, harassment and bullying, said Mr. Murphy. Given the new memo, he said, compliance professionals need to huddle with their lawyers to talk about how to proceed. “I think a company lawyer could very well advise that it is more important to fight disrespect, that the risk of harassment is far greater and so it is better to be strong in promoting a workplace that is respectful,” said Mr. Murphy. “The withdrawal of the general counsel’s memo makes that advice easier to give to people,” he said.

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## EXCLUSIVE ON RISK AND COMPLIANCE JOURNAL

**False Claims Act pioneer returns to whistleblower practice.** John R. Phillips, who helped drive the transformation of a Civil War-era statute into a powerful tool to fight fraud against the government, is back as a whistleblower attorney after a stint as U.S. ambassador to Italy. He discussed the impact of the False Claims Act in an interview.

## COMPLIANCE

**Regulators rule against Trump plan on power.** Federal energy regulators on Monday rejected a Trump administration proposal aimed at shoring up coal-fired and nuclear power plants to bolster the U.S. electricity grid, saying the administration hadn’t persuaded them the plan was needed to ensure the system’s reliability, the WSJ reports.



A coal-fired power plant in Wyoming, shown in 2014. *JIM URQUHART/REUTERS*

**GOP limits hopes for safety-net changes.** Republicans are scaling back their ambitions to overhaul safety-net programs and dismantle the Affordable Care Act following President Donald Trump's weekend retreat with GOP leaders, due to concerns they can't muster enough support ahead of the 2018 midterm elections, the WSJ reports.

**U.S. banks seek government help on money laundering.** Efforts to overhaul U.S. anti-money-laundering laws are gathering steam, as large banks, anticorruption groups and law-enforcement authorities coalesce around the idea of creating a national, government-run database of corporations and their true owners, the WSJ reports.

#### **DATA SECURITY**

**Vtech Electronics to pay over privacy.** VTech Electronics Ltd. agreed to pay \$650,000 to settle U.S. Federal Trade Commission charges it didn't obtain parental consent before collecting personal data from children who used its toys. VTech didn't admit to any violations of law as part of the settlement, which was announced Monday, the WSJ reports.

**Microsoft suspends some patches.** Microsoft Corp said on Tuesday it had halted software updates intended to protect against the Meltdown and Spectre security bugs for computers using Advanced Micro Devices chips. Customers complained the software updates froze their machines. The firms weren't immediately available for comment, Reuters reports.

#### **RISK**

**North Korea steers clear of nuclear talks.** South Korea sought unsuccessfully to raise the North's nuclear program during bilateral talks, though the two sides appeared close to an agreement for Pyongyang to participate in next month's Winter Olympics, fueling cautious hope for a thaw in relations, the WSJ reports.

#### **OPERATIONS**

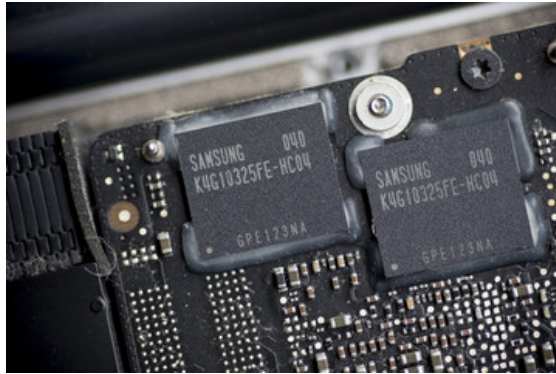
**Consumer demand boosts air cargo traffic.** Air cargo shipments are soaring due to surging demand for rapid delivery of everything from smartphones to paper towels. Global airfreight traffic climbed almost 9% year-over-year in November, according to cargo data provider WorldACD, the WSJ reports.

**Weather, errors brought snags at airport.** Human error, cold weather and organizational complexities caused the weekend of delays at John F. Kennedy International Airport, executives said, as the facility's operator promised an investigation into the travel snarls at New York City's busiest airport, the WSJ reports.

#### **STRATEGY**

**Altice to spin off U.S. unit.** Altice NV intends to spin off its controlling stake in its U.S. arm as part of a broader reorganization that will split the company in two: Altice Europe, which would include its international holdings, and Altice USA, the company said Monday, the WSJ reports.

**Samsung ranks first in capital spending.** Samsung Electronics spent more money on capital expenditures last year than any other publicly traded company, an example of how technology firms have driven an uptick in global manufacturing investment. It invested \$44 billion to build or expand manufacturing facilities, according to S&P Global Market Intelligence estimates, the WSJ reports.



Samsung Electronics Co. chips are shown inside an Apple Inc. laptop computer in Thailand in July. *BLOOMBERG*

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