OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 12-30 January 23, 2012

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Anne G. Purcell, Associate General Counsel

SUBJECT: Cases involving Employer Mandatory Arbitration Policies that Interfere with Employees' Section 7 Rights

In *D.R. Horton, Inc.*,[1] the Board held that a policy or agreement that precludes employees from filing employment-related collective or class claims against the employer, in both arbitral and judicial forums, unlawfully restricts the employees' Section 7 right to engage in concerted action for mutual aid or protection, and violates Section 8(a)(1) of the Act. In so holding, the Board expressly rejected the construction of the Act advanced in Memorandum GC 10-06, *Guideline Memorandum Concerning Unfair Labor Practice Charges Involving Employee Waivers in the Context of Employers' Mandatory Arbitration Policies* (June 16, 2010). *See 357 NLRB No. 184, slip op. at 6-7*. Accordingly, the analysis of Memorandum GC 10-06 is no longer valid, and that Memorandum should not be relied upon in any pending or future cases.

In addition, in any case involving arbitration agreements alleged to limit employees' collective legal action, the Regional Office should contact the Division of Advice as soon as they have completed their investigation to discuss further processing of the case.

So that we can track these cases, Regions should assign the Hot Topic of "Employer Mandatory Arbitration Policy" to these cases in NxGen.

If a Regional Office has any questions concerning this legal issue, it may contact Advice at any time.

/s/
A.P.

cc: NLRBU
Release to the Public

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[1] 357 NLRB No. 184 (2012).