

# Top Five Labor Law Developments for November 2022

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Labor Relations

1. *President Joe Biden signed legislation imposing a collective bargaining agreement between freight carriers and railroad unions, avoiding a nationwide strike.* Congress passed the bill utilizing its authority under the Railway Labor Act, preventing what could have been a massive hit to the country's supply chain after several railroad unions failed to ratify the tentative agreement. The contract contains wage increases of roughly 24 percent over four to five years and an additional day of paid leave. Other terms will vary across the dozen national rail unions. More paid sick leave for employees was a point of contention between the unions and carriers. While the U.S. House of Representatives voted in favor of a separate piece of legislation that would have added seven paid sick leave days for the rail workers, the Senate did not pass that bill. In a statement, President Biden vowed to seek paid leave in the future not just for the railroad workers, but for all workers.
2. *The deadline to file initial comments regarding the National Labor Relations Board's proposed "blocking charge" rule has been extended to February 2, 2023.* The deadline to reply to filed comments also was extended, to February 16, 2023. Under the current rule, if a party to an election (typically, a labor organization) files an unfair labor practice (ULP) charge while an election is pending, the election is held as scheduled, irrespective of a pending charge. The Board impounds the ballots until it finds the charge lacks merit or unlawful conduct occurred and warrants voiding the election (without counting the votes). The proposed rule would revert to the pre-Trump Board standard, in which a regional director may delay the election following a ULP charge filing "if the conduct alleged threatens to interfere with employee free choice." While the Board asserts the change will conserve its resources by avoiding rerun elections, such blocked elections can result in delaying the tally of ballots for several years.
3. *The Board's staff union held a rally to protest working conditions and underfunding.* Amidst the call to Congress for increased funding, the National Labor Relations Board Union (NLRBU) criticized Board General Counsel Jennifer Abruzzo. In a series of postings on Twitter, the union alleged Abruzzo is ignoring workers' requests for more flexibility, particularly regarding remote work options. The Board's current telework policy expires on December 26, meaning Board agents will see their remote workdays reduced from five days per pay period to three days per pay period — the policy in place prior to the COVID-19 pandemic.
4. *The U.S. Chamber of Commerce filed a lawsuit alleging Connecticut's prohibition of "captive audience" meetings is preempted by the National Labor Relations Act.* The law effectively bans employers from requiring employees to attend meetings in which the employer attempts to dissuade employees from unionizing. These "captive audience" meetings have long been permitted under the Act if they do not threaten,

punish, or promise benefits to employees. Accordingly, the U.S. Chamber of Commerce has argued that not only is the law unconstitutional, but it is preempted by the Act. In August 2021, General Counsel Abruzzo issued a memorandum announcing her intention to review the legality of such meetings.

5. *Illinois voters approved a state constitution amendment reaffirming employees' union rights.* The amendment solidifies Illinois employees' rights to "organize and bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work." The measure also prohibits any law that interferes with, negates, or diminishes those same rights. Because the Act already covers most private sector workers, the amendment's impact is generally limited to the public sector, such as state and local government workers. However, the amendment prohibits a right-to-work law in Illinois, making it the only state to have such a ban in a state constitution.

Please contact a Jackson Lewis attorney if you have any questions about these developments.

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