

Top Five Labor Law Developments for March 2023

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Labor Relations

1. *The National Labor Relations Board will release its new joint-employer rule in August* In September 2022, the Board issued its proposed rule for determining joint-employer status under the National Labor Relations Act under which entities are deemed joint employers if they “share or codetermine those matters governing employees’ essential terms and conditions of employment.” Under the proposed rule, a return to the Obama-era standard, the authority to control terms and conditions of employment alone is sufficient to establish joint-employer status, even if the entity never exercises such authority. The Board indicated it completed its review of the approximate 13,000 public comments it received and will issue a final rule in August. The joint-employer analysis has significant implications for employers, as it determines when one entity can be held liable for the other’s unfair labor practices.
2. *According to a Bloomberg Law report, union contracts ratified in 2022 provided workers their highest pay raises in more than 30 years.* The report highlighted that average first-year raises increased substantially, averaging 6.6% when accounting for signing bonuses and other lump-sum payments. Average pay increases were even higher in the non-manufacturing industries. These gains likely are due at least in part to the COVID-19 pandemic, increased strike activity and union election wins, high inflation rates, and a worker-friendly Board under the Biden Administration.
3. *Board General Counsel (GC) Jennifer Abruzzo issued a memorandum renewing her agenda to overturn Board precedent. [GC Memorandum 23-04](#).* In August 2021, the GC issued a memorandum requiring all Board regional offices to submit cases involving dozens of enumerated policies she seeks to overturn to the Board’s Division of Advice. [GC Memorandum 21-04](#). The memo set an aggressive agenda to revisit those precedents, many of which were issued during the Trump Administration. While the GC has had the opportunity based on filed charges to request and obtain overturning of a number of precedents so far, the new memo outlines 15 outstanding issues that still need cases to overturn precedent, including make-whole compensatory remedies for failure to bargain, post-contract status quo changes and strike replacements. The memo also reiterates the GC’s directive from another 2022 memo requiring regions to submit any cases involving electronic surveillance and algorithmic management of employees to Advice. [GC Memorandum 23-02](#).
4. *The Board and the Consumer Financial Protection Bureau [agreed](#) to share information to protect workers and consumers.* The memorandum of understanding provides that the agencies will share information on the sale of workers’ personal data and training repayment agreements common in the gig economy. These agreements require workers to pay the costs of their own training and equipment, which the agencies argue prevent workers from leaving one job for another. The memo also recognizes scrutinizing employee surveillance as a shared interest for the two agencies.
5. *Michigan’s Governor Gretchen Whitmer signed legislation repealing the state’s right-to-work law. Michigan is the first state in almost 60 years to repeal a right-to-work law.* A right-to-work law prohibits collective bargaining agreements from requiring

union membership or payments as a condition of employment. Approximately 26 other states — mostly in the South and Midwest — have right-to-work laws. Governor Whitmer had signed similar legislation for the state’s municipal workers, but the U.S. Supreme Court’s 2018 decision in [Janus v. AFSCME](#), 138 S. Ct. 2448, prohibits mandating dues for public sector workers. The legislation takes effect around April 2024, 90 days after the legislative session ends.

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

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