

Top Five Labor Law Developments for September 2023

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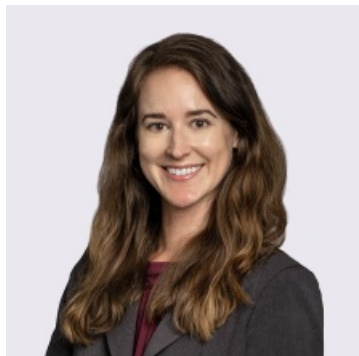
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1. *The National Labor Relations Board anticipates issuing its new joint-employer rule by the end of October.* The new rule is expected to revert to the Obama-era standard where entities may be deemed joint employers if they “share or codetermine those matters governing employees’ essential terms and conditions of employment.” These terms and conditions include wages, benefits and other compensation, work and scheduling, hiring and discharge, discipline, workplace health and safety, supervision, assignment, and work rules. While the current standard — issued by the Trump-era Board — requires proving one entity exercised control over the terms and conditions of work of another entity’s employees, the new rule will state that the authority to control such terms and conditions is sufficient to establish joint-employer status. The joint-employer analysis has significant implications for employers, as, inter alia, it determines when one entity can be held liable for the other’s unfair labor practices and when two entities need to jointly bargain with a union.
2. *The United Auto Workers (UAW) commenced a strike after negotiations for a new contract stalled.* The UAW, which represents 150,000 workers, is seeking additional paid time off, a 32-hour workweek, an end to wage tiers, and at least a 30% raise (down from the 46% initially proposed). The transition to electric vehicles and hiring at battery plants have also been critical points of contention. While the strike marks the first time workers at all the “Detroit Three” automakers have gone on strike simultaneously, the UAW so far has implemented only smaller, strategic strikes at targeted facilities rather than a full-member strike. However, UAW President Shawn Fain threatened to expand the strike to more locals if the parties do not make progress at the bargaining table. The UAW noted progress with Ford Motor Co., which increased its wage proposal to more than 20% and proposed increased benefits and vacation time. President Joseph Biden joined the picket line with striking workers in Michigan, making him the first U.S. president to do so. It is estimated the strike has cost the U.S. economy billions of dollars.
3. *The Writers Guild of America (WGA) reached a tentative agreement with producers, allowing writers to return to work during the ratification vote.* The WGA voted to recommend the tentative agreement following the strike that started in May. The agreement will be effective as of Sept. 25, 2023. The three-year agreement provides pay increases over that same period, as well as improved pay structures — including an accelerated payment structure for flat deals and improved terms relating to streaming services. Writers also gained concessions on critical issues such as a mandatory minimum staffing of writers for TV shows and the use of artificial intelligence, including an agreement that

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robots and AI tools will not receive screen credits. Studios will shift focus toward reaching a deal with the striking actors union, which has been on the picket line since July over similar concerns.

4. *The Department of Labor (DOL) issued a final rule updating regulations under the Davis-Bacon and Related Acts (DBRA) relating to federal construction contracts.* The final rule includes hundreds of pages of changes to the DBRA standards and is estimated to impact over one million construction workers. The rule does not modify the types of projects subject to DBRA standards, but it does provide key revisions and several clarifications regarding the types of industries subject to its provisions. While compliance with the DBRA will be more complicated for employers, the DOL advises that the updates come after “an increased number of federally funded projects,” as well as the need to “provide clarity to contracting agencies, contractors, and workers, to enhance the effectiveness and consistency of the administration and enforcement of the DBRA.” The final rule will go into effect on October 23, 2023.
5. *New York State enacted a law banning captive audience meetings.* The new law prohibits an employer from disciplining employees who refuse to attend an employer-sponsored meeting, “the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters.” The law defines “political matters” to include the decision on whether to support or join a labor organization. In essence, the law prohibits employers from mandating its employees attend meetings in which the employer attempts to dissuade employees from unionizing. It took effect immediately upon signing by the governor on Sept. 6. New York is the fifth state to prohibit mandatory captive audience meetings, following similar bans enacted in Connecticut, Maine, Minnesota, and Oregon. However, courts are considering whether such bans are preempted by the National Labor Relations Act. For instance, litigation is ongoing over Connecticut’s ban on the basis that the ban is preempted by Section 8(c) of the Act.

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

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