Newsletter

Top Five Labor Law Developments for April 2024

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1. *Volkswagen employees at a Chattanooga, Tennessee, facility voted to join the United Auto Workers (UAW).* The workers voted 2,628 to 985 to join the UAW. The union has been focusing its organizing efforts at foreign automakers with U.S. facilities following successes with the "Big Three" automakers last year. The UAW won record-breaking pay increases for those workers. Those successes likely increased momentum at Volkswagen. According to a UAW press release, the Volkswagen workers are the first Southern autoworkers outside the Big Three to win a union election. The UAW plans to continue its push to organize at other non-union car manufacturers across the country.

2. *The National Labor Relations Board's General Counsel (GC) Jennifer Abruzzo issued a memorandum instructing Board Regional Offices to seek enhanced remedies for unlawful work rules or contract terms.* Memorandum GC 24-04 (Apr. 8, 2024). While the GC noted progress in achieving make-whole relief relating to back pay for employees "discharged for engaging in union or other protected concerted activity," she stated such relief must be expanded to include all employees harmed as a result of an unlawful work rule or contract term — such as in an employment or severance agreement — "regardless of whether those employees are identified during the course of the unfair labor practice investigation." The GC asserted that "mere rescission" of the rule or term does not provide adequate relief. Rather, discipline must be expunged or retracted to make impacted employees whole. Accordingly, Regions should seek settlements for make-whole relief where the discipline or legal enforcement action stemming from an unlawful rule or term "targets employee conduct that 'touches the concerns animating Section 7,' unless the employer can show that the conduct actually interfered with the employer's operations and it was that interference, and not reliance on the unlawful rule or term, that led to the employer's action." Regions should seek and obtain information from employers regarding which employees were impacted with discipline or legal enforcement action..

3. *The Board reported significant increases in union election petitions and unfair labor practice charges.* According to a Board press release, union activity is still on the rise, with both unfair labor practice charges and election petitions increasing at the highest levels in decades. In the first six months of fiscal year (FY) 2024 (which began Oct. 1, 2023), the Board noted a 7% increase in unfair labor practice charges compared to the same period last year. Union election petitions increased 35%, from 1,199 in the first six months of FY2023 to 1,618 during the same period in FY2024. RM petitions by employers have particularly skyrocketed — accounting for 281 of filed petitions — due to the Board's new framework for when an employer needs to file an RM petition after receiving a demand for union recognition..

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4. *The Department of Labor's final rule for Occupational Safety and Health Administration (OSHA) inspections raises unionization concerns for employers.* The rule aims to clarify (but it instead expands) the rights of employees to authorize third-party representatives to accompany an OSHA compliance safety and health officer during a workplace inspection. As a result, however, the rule seemingly allows a third-party union representative during an organizing campaign to report a safety concern to OSHA and then gain direct access to an employer's workplace during the inspection that follows. This would give union organizers unprecedented access and broaden unions' access rights to employer property. The rule is scheduled to take effect on May 31, 2024.

5. *Law360 reported that the College Basketball Players Association filed an unfair labor practice charge against the University of Notre Dame regarding classification of college athletes. University of Notre Dame,* 25-CA-340413 (Apr. 18, 2024). The charge alleges Notre Dame violated the National Labor Relations Act "by classifying college athletes as 'student-athletes.'" The charge follows the Board GC's 2021 memorandum, Memorandum GC 21-08, in which she stated her position that student-athletes at private universities are "employees" under the Act because they perform services for their colleges and the National Collegiate Athletic Association in return for compensation and are subject to their respective college's control. The Board has yet to rule on the issue.

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