

Top Five Labor Law Developments for October 2024

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Meet the Authors



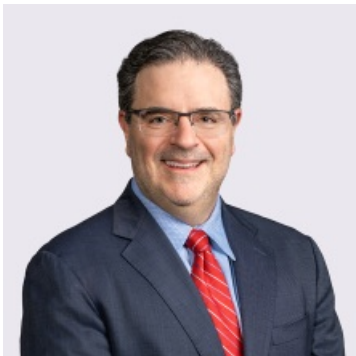
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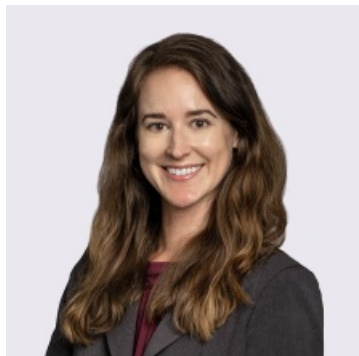
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1. *Former President Donald Trump's Election Day victory leaves the National Labor Relations Board's status uncertain, but a new general counsel appointment is likely.* Currently, the Board has a 2-1 Democratic majority. President Joe Biden has made two Board member nominations (one Republican and one Democrat), but they have not yet been confirmed by the U.S. Senate. If the current Senate confirms President Biden's nominations, the Board would have a Democratic majority through Aug. 27, 2026. It is unclear if there are enough votes to confirm the nominations. If the Senate does not confirm President Biden's nominations before the new Senate is seated on Jan. 3, 2025, President-Elect Trump likely will nominate two Republicans to the vacant Board member seats during his term. He will almost certainly discharge current General Counsel Jennifer Abruzzo (D) on Inauguration Day and appoint a new general counsel (GC). It is also unclear whether President-Elect Trump would attempt to fire the Democratic Board members. The constitutionality of their removal protections is under review. Nonetheless, a future Board with a Republican majority is expected to revisit recent pro-labor rules and decisions, including those covering (1) bargaining orders; (2) unionizing without an election; (3) bargaining unit definitions; (4) unfair labor practice remedies; (5) non-compete and confidentiality/non-disparagement provisions; and (6) work rules and employee handbook policies. A Republican GC and Board majority will likely lead to more employer-friendly precedent.
2. *The Board's GC Jennifer Abruzzo declared certain "stay-or-pay" provisions unlawful under the National Labor Relations Act, expanding her theory that certain restrictive covenants are unlawful.* Memorandum GC 25-01 (Oct. 7, 2024). Stay-or-pay provisions require employees to repay employers for benefits they previously received (such as sign-on or relocation bonuses and training payments) if they leave their jobs within a certain period. The memo outlines a proposed framework to determine the lawfulness of such provisions, emphasizing that they must be narrowly tailored to minimize interference with employees' rights. The memo gives employers until Dec. 6, 2024, to cure any preexisting provisions, or they may face significant make-whole remedies. While the memo is non-binding, it indicates the GC will file complaints against employers who maintain these complaints; however, the practical enforceability of this initiative is unclear.
3. *Union election petitions rose 27 percent in fiscal year (FY) 2024, more than double FY 2021 petitions.* Unfair labor practice charge filings also rose by 7% from the last fiscal year, making FY 2024 the highest for total case intake in over a decade. The increase in union election petitions follows the Board's 2023

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decision requiring employers file “RM petitions” after receiving a union’s demand for recognition — more than 450 RM petitions were filed in FY 2024. The Board also noted that, despite increased workload and reduced staffing, it processed more cases this year. The surge in case activity highlights the need for employers to stay informed about organizing trends and address underlying employee issues driving the increase in union election petitions.

4. *Two entities are seeking to enjoin the Illinois Worker Freedom of Speech Act that prohibits mandatory “captive audience” meetings, while Alaska residents voted for a similar prohibition. Illinois Policy Institute and the Technology & Manufacturing Association v. Flanagan, 1:24-cv-06976 (Oct. 30, 2024).* The entities argued the Illinois ban on employer speech to employees about “political matters,” which includes mandatory meetings about labor organizations, violates the First Amendment’s guarantee of freedom of speech and is preempted by the Act. Illinois is among a growing list of states that have recently enacted legislation banning the meetings. Other states include California, Connecticut, Hawaii, Maine, New York, Oregon, Vermont, and Washington. In the 2024 election, Alaska became the first state to restrict mandatory captive audience meetings through a ballot measure.
5. *Hundreds of New York Times Tech Guild employees went on strike ahead of Election Day.* The Tech Guild’s 600 members, who control the back-end systems behind the newspaper’s digital operations, went on strike after not reaching a contract after months of negotiations. The main issues in recent days were whether the contract would have a “just cause” provision (meaning, employees can be disciplined only for just cause), pay increases and equity, and remote work flexibility. The strike coincided with Election Day when increased viewership was expected.

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