Newsletter

Top Five Labor Law Developments for November 2024

By Jonathan J. Spitz, Richard F. Vitarelli, Nicholas A. Scotto & Lorien E. Schoenstedt

December 10, 2024

Meet the Authors

Jonathan J. Spitz

(He/Him • Jon)
Principal
(404) 586-1835
Jonathan.Spitz@jacksonlewis.com

Richard F. Vitarelli

Principal
860-331-1553
Richard.Vitarelli@jacksonlewis.com

Nicholas A. Scotto

1. *The National Labor Relations Board prohibited employers from holding mandatory "captive audience" meetings, overturning long-standing precedent.* 373 NLRB No. 136 (Nov. 13, 2024). The decision prohibits employers from requiring employees to attend meetings where the employer expresses views on unionization, citing the coercive nature of such meetings. However, the decision provides a "safe harbor" for employers, allowing them to hold voluntary meetings if they inform employees reasonably in advance of the meeting that attendance is voluntary, failure to attend or leaving the meeting will not result in any adverse consequences, and the employer will not keep records of employee attendance. The new standard applies only to future cases, not retroactively. While some states have previously enacted broader laws restricting captive audience meetings, litigation is pending as to whether federal law preempts state laws on the matter.

2. *The Board established a new standard to determine the legality of employer statements about the general consequences of unionization.* 373 NLRB No. 135 (Nov. 8, 2024). Under the prior standard, employer statements (such as those predicting the negative impact unionization will have on employees' ability to directly address issues with their employer) were categorically lawful. Under the new standard, the Board will use a case-specific approach to determine if predictive statements are unlawfully coercive. Because the Board will more closely scrutinize employer predictions about the impact of unionization on the employer-employee relationship, employers must carefully phrase their campaign statements and base them on objective facts beyond their control. The new standard does not apply retroactively.

3. *The Board's 2025 composition remains uncertain as the U.S. Senate has not confirmed President Joe Biden's nominees for two vacancies on the Board.* The current Board has a 3-1 Democratic majority. President Biden renominated Board Chair Lauren McFerran (whose term expires on Dec. 16) for a third term and nominated Joseph L. Ditelberg to fill the vacant Republican seat. If they are confirmed, the Board will maintain a Democratic majority until at least August 2026. If President Biden's nominations are not confirmed before President-Elect Donald Trump takes office, the Board will likely shift to a Republican majority much earlier during his term and potentially return to more employer-friendly standards and rules.

4. *The U.S. District Court for the District of Columbia ruled it lacked jurisdiction to hear an employer's Seventh Amendment (right to a jury trial) and separation of powers challenges to the Board's structure; the U.S. Court of Appeals for the*

Associate
(212) 545-4066
Nicholas.Scotto@jacksonlewis.com

Lorien E. Schoenstedt
KM Attorney
312-803-2516
Lorien.Schoenstedt@jacksonlewis.com

Related Services

Labor Relations

Second Circuit is set to rule on similar constitutional arguments. VHS Acquisition Subsidiary No. 7 v. NLRB, 1:24-cv-02577 (D.D.C. Nov. 17, 2024). The district court determined that the National Labor Relations Act's exclusive review scheme precluded its jurisdiction, ruling the employer must seek review through the Board and then the Circuit Courts of Appeal. The court found, however, it could hear the employer's challenge to Board administrative law judges' (ALJs') removal restrictions. Arguments challenging the Board's constitutionality have gained steam in recent months across federal courts. The Second Circuit, for instance, will soon issue a ruling on whether the Board's case against an employer should be stayed because of similar constitutional concerns over ALJs' removal restrictions. To date, employers have only been successful on these arguments within the Fifth Circuit.

5. *The Board's Brooklyn regional office reached a settlement agreement requiring an employer to rescind "stay-or-pay" contracts or training repayment agreement provisions (TRAPs). Maxwell Plumb Mechanical Corp.,* 29-CA-322703 (Nov. 5, 2024). Pursuant to the settlement, the company must stop enforcing "stay-or-pay" contracts, wherein new employees must repay a company's training costs if they quit before a specified timeframe, and ensure supervisors attend training on employee rights. The company also must reinstate three terminated employees and pay them $81,000 in compensation. The settlement follows Board General Counsel Jennifer Abruzzo's May 2023 memo urging the Board to restrict certain non-compete agreements and her subsequent October 2024 memo declaring stay-or-pay agreements and TRAPs unlawful.

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