

Top Five Labor Law Developments for January 2025

By Laura A. Pierson-Scheinberg, Richard F. Vitarelli, Nicholas A. Scotto & Lorien E. Schoenstedt

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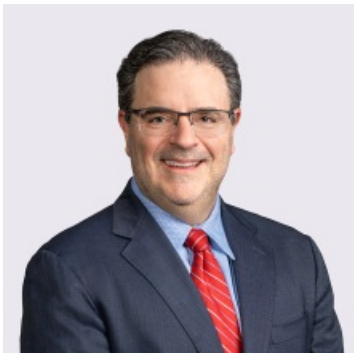
Laura A. Pierson-Scheinberg

(She/Her)

Principal

415-796-5408

Laura.PiersonScheinberg@jacksonlewis.com



Richard F. Vitarelli

Principal

860-331-1553

Richard.Vitarelli@jacksonlewis.com



Nicholas A. Scotto

1. *President Donald Trump removed National Labor Relations Board member Gwynne Wilcox and General Counsel (GC) Jennifer Abruzzo and appointed a new interim GC.* While Abruzzo's termination was widely expected, Wilcox's discharge is unprecedented. The National Labor Relations Act allows the president to remove a Board member only "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." Trump said he "lack[ed] confidence" in Wilcox and Abruzzo and claimed the Act's limitation on his removal of Board members is inconsistent with his executive power under the Constitution. Wilcox's removal leaves the Board without a quorum to issue decisions until President Trump appoints a third member confirmed by the U.S. Senate to the five-seat Board. The Board, however, published a notice confirming administrative cases and petitions for election will continue despite its inability to issue decisions. Although Wilcox has challenged her removal in a federal lawsuit, President Trump potentially has three Board vacancies to fill. The president also appointed William Cowen, a former Board member and the current regional director of the Board's Los Angeles office, as acting GC until he names his GC nominee for Senate approval.
2. *Union membership declined in 2024, according to a Bureau of Labor Statistics report.* Overall union membership dropped from 10% in 2023 to 9.9% in 2024, a continued decline since membership peaked in the 1950s. The private sector union membership rate also dipped slightly, from 6% in 2023 to 5.9% in 2024. Private sector industries with the highest union membership rates in 2024 included utilities, transportation and warehousing, and educational services. Overall, the number of private sector union members declined by 184,000 in 2024, while the number of public sector union members remained steady.
3. *Former Board GC Abruzzo issued a memorandum addressing the interplay between the Act and equal employment opportunity (EEO) laws.* The memo provides guidance for employers on harmonizing the laws, including navigating potentially harassing employee conduct during activities otherwise protected by the Act and implementing strategies to prevent conflicts. The memo suggests best practices to comply with obligations under both the Act and EEO laws, such as clear and narrowly tailored workplace civility and investigative-confidentiality rules with disclaimers, regular training sessions on compliance and workplace norms, and open communication between employees and management. The viability of the memo is uncertain under the new Trump Administration, however, as it is

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



Lorien E. Schoenstedt

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

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likely President Trump will appoint a new GC who will rescind many of former GC Abruzzo's memos.

4. *The Federal Trade Commission (FTC) clarified that independent contractors and gig workers are protected from antitrust liability when organizing and collectively bargaining.* The policy statement, issued during the final days of the Biden Administration, aims to support gig workers (such as rideshare and food delivery drivers) seeking improved workplace conditions without a formal employer-employee relationship with their company. The Norris-LaGuardia Act of 1932 exempts organized labor engaged in protected bargaining from liability under the Clayton Antitrust Act, but courts have yet to consider whether the Norris-LaGuardia Act exemption extends to independent contractors, according to the FTC. Newly appointed Republican Commissioner Andrew Ferguson criticized the policy statement, saying it would not bind the agency. He also said the Biden Administration should not have been making policy changes immediately prior to Trump's inauguration.
5. *The International Longshoremen's Association (ILA) and the U.S. Maritime Alliance (USMX) reached a tentative six-year contract, averting another work stoppage.* The contract provides job guarantees amid concerns that automated technology would replace many union jobs. It also provides a 62% pay raise that was previously agreed to prior to a three-day strike in October 2024. The parties jointly stated, "This agreement protects current ILA jobs and establishes a framework for implementing technologies that will create more jobs while modernizing East and Gulf coasts ports – making them safer and more efficient, and creating the capacity they need to keep our supply chains strong." If ratified by the workers, the contract will avoid another strike that could disrupt the nation's supply chain.

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

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