

Legal Update Article

# **Democratic Bill Seeks to Classify Graduate Student Workers as Employees under NLRA**

By Michael R. Bertoncini &

November 26, 2019

## Meet the Authors



### Michael R. Bertoncini

Principal

(617) 305-1270

Michael.Bertoncini@jacksonlewis.com

## Related Services

Higher Education

Labor Relations

Technology

The “[Respect Graduate Student Workers Act](#),” introduced by Representative Mark Pocan (D-Wis.), aims to classify graduate student workers as employees and ensure them “full labor protections” under the National Labor Relations Act (NLRA).

The bill also seeks to prohibit the National Labor Relations Board (NLRB) from finalizing its proposed rule, issued on September 23, 2019, that students performing services at a private college or university that are related to their studies are not statutory employees under the NLRA. (For more details on the proposed rule, see our article, [NLRB Proposes Rule to Exclude Student Workers at Private Colleges, Universities from NLRA Coverage.](#))

The NLRB’s proposed rule would overturn the Board’s decision in *Columbia University*, 364 NLRB No. 90 (2016), which is the current law on whether student workers are employees under the NLRA. In that decision, the Board explained that there was no language in the NLRA prohibiting the Board from treating student assistants as statutory employees “where they perform work, at the direction of the university, for which they are compensated.” The Board also stated, “[A] graduate student may be both a student *and* an employee; a university may be both the student’s educator *and* employer.”

The *Columbia* decision did not create a bright-line rule requiring the NLRB to find student workers to be employees covered by the NLRA whenever they are determined to be common-law employees. The NLRB had ruled only that it *may* find students are statutory employees. However, the Board’s proposed rule definitively provides:

Students who perform any services, including, but not limited to, teaching or research assistance, at a private college or university in connection with their undergraduate or graduate studies *are not* employees within the meaning of Section 2(3) of the Act.

(Emphasis added.)

The Respect Graduate Student Workers Act’s approach also is definitive. The bill provides: graduate student workers at private colleges and universities are employees and should be granted every right and responsibility conferred to them under the NLRA. It also provides that graduate student workers should not be excluded from the definition of “employee” on the basis of an educational relationship with an employer.

On the same day Representative Pocan introduced his bill, thousands of graduate student workers gathered in Washington D.C., Boston, and Chicago to protest the Board’s proposed rule and deliver almost 30,000 comments to the Board opposing it. Colleges and universities may continue to experience increased organizing activity and pressure tactics such as student worker strikes and protests.

We will continue to monitor and report further developments. Please contact a Jackson Lewis attorney if you have any questions or want to discuss proactive approaches to student worker organizing.

©2019 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.