



Federal Regulation and Your Business:

Expected Developments in the Second Term

WHAT EVERY EMPLOYER SHOULD KNOW

The National Labor Relations Board (NLRB) and Department of Labor (DOL) have been pursuing a union-friendly, anti-employer agenda through regulations, case decisions, and enforcement. With continued high unemployment, these agencies are making it harder to start or expand a business, and create more jobs.

Expand Non-Majority Unions Via NLRB Case Law

In *Specialty Healthcare*, the NLRB redefined how bargaining units are determined, allowing unions to gerrymander the workers they wish to organize and create very small “micro” unions. This is facilitating a proliferation of small unions and making it far easier for organizers to penetrate non-union workplaces.

Discourage Employers from Seeking Legal Advice About Unions.

The DOL is redefining “persuader” activity, making it far more difficult for employers to get legal advice relating to unions. Any type of persuader activity will require filing detailed, financial filings with DOL.

Redefine Collective Bargaining and Concerted Activity as “Civil Rights”

Unions want to amend the Civil Rights Act to include collective bargaining and concerted activity under its protections. Unions and employees could sue employers in civil courts, seeking jury trials and additional remedies, including compensatory, emotional distress and punitive damages.

The Rise of Worker Centers

As their ranks decline, unions have turned to alternative approaches to organizing, like collaboration with Worker Centers, which may help unions organize facilities where workers have previously rejected unions.

Employers Beware of Social Media Pitfalls

Employee use of social media, like Facebook or Twitter, is a hot topic for the NLRB, which has struck down many sensible employer policies limiting the use of social media with regard to the workplace. Even policies simply encouraging workers to be respectful have been ruled overbroad and unlawful.

Cyber Card Check

The NLRB wants to make off-site, internet voting standard for union certification elections. This “Cyber Card Check” would carry the same potential for coercion as the original Card Check bill by depriving workers of the protection of a private of the voting booth and expose them to any organizer with an iPad.

Ambush Elections

The NLRB wants to shorten the union election period from about five weeks to two. The agency’s original expedited election rule was struck down by the Court of Appeals, but this remains a top NLRB priority.

Increasing Taxpayer Costs for Government Contracts

“High Road Contracting,” a potential new executive order, would allow government to use its authority over how taxpayer money is spent to favor unions and unionized contractors, would increase costs related to wages, healthcare, pensions and other benefits and make federal projects more expensive to complete.

Give Unions “Veto Power” Over Where Companies Can Expand

The NLRB’s Acting General Counsel sued Boeing when it built a new \$1 billion non-union aircraft plant in right-to-work South Carolina rather than in Washington State, where the factory would have been staffed by union members. The NLRB has vowed to sue any employer who makes a similar choice.

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