

Top Five Labor Law Developments for January 2023

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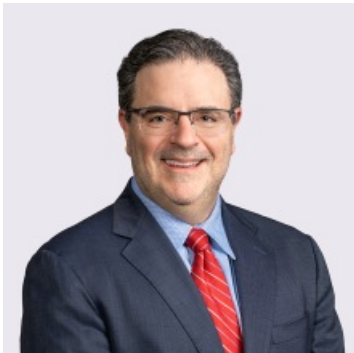
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Labor Relations

1. *More than 220,000 workers participated in over 300 total work stoppages in 2022, according to a Bloomberg Law report.* The number of strikes is the highest recorded in 17 years. While the majority of work stoppages involved the retail industry, more than 100 strikes were attributed to coffee shops. The education industry also was affected heavily by work stoppages, as graduate student-workers, resident assistants, and teaching assistants nationwide struck to improve pay and working conditions. The year 2022 also witnessed an uptick in representation petitions and unfair labor practice charges.
2. *The U.S. Court of Appeals for the D.C. Circuit affirmed a ruling that blocked parts of the Trump National Labor Relations Board's election procedure rulemaking.* [*AFL-CIO v. NLRB*](#), No. 20-5223 (D.C. Cir. Jan. 17, 2023). The Trump Board's amendments were mostly aimed at reforming the controversial Obama-era "quickie election" rules. In May 2020, then-U.S. District Court Judge Ketanji Brown Jackson — now a U.S. Supreme Court justice — enjoined parts of the rule, finding that five of the provisions were unlawfully promulgated. However, the D.C. Circuit only partially affirmed the district court, finding two of the challenged provisions regarding pre-election litigation and pre-election employee communication fell within the procedural exemption provision and did not need to go through the notice-and-comment period. The D.C. Circuit affirmed Judge Jackson's decision to block the other three amendments, finding they dealt with substantive, rather than procedural, matters.
3. *The U.S. Court of Appeals for the Ninth Circuit upheld President Joe Biden's termination of former Trump-appointed Board General Counsel (GC) Peter Robb.* [*NLRB v. Aakash, Inc.*](#), No. 22-70002 (9th Cir. Jan. 27, 2023). In a Board case regarding a company's alleged unfair labor practices, the company argued that current Board GC Jennifer Abruzzo lacked authority to prosecute the charges, claiming President Biden unlawful terminated Robb without cause during his four-year term. The Ninth Circuit rejected that argument, noting that past presidents have maintained that Board GCs can be removed at will. The decision solidifies Board decisions since President Biden appointed GC Abruzzo.
4. *Union membership rate among private sector workers fell to 6.0% in 2022, according to a U.S. Bureau of Labor Statistics (BLS) news release.* The drop from 6.1% in 2021 continues the overall decline since private sector union membership peaked in the mid-1950s. Union membership did increase in some states, including southern states such as Alabama, Kentucky, and Texas. Industries with some of the highest unionization rates included transportation and utilities, construction, and motion pictures and sound recording. While organizing activity increased in 2022 (including petitions for representation at high-profile employers for the first time) the size of the national workforce also grew, meaning unions would have had to grow membership even more significantly to maintain or improve the national membership rate.
5. *Republican Members of the U.S. House of Representatives led a vote to eliminate the*

Congressional Workers Union (CWU). The CWU, which represents staffers in several congressional offices, has ratified its first collective bargaining agreement at a Michigan office. However, as part of the GOP's new rules package, House representatives voted 220-213 to repeal the 2022 resolution that granted staff the rights to join a union and bargain collectively. This marked the first major move by the Republican-controlled House to put the brakes on staffers' organizing movement, but it is unclear whether the House has the authority to eliminate unions in its rules package.

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

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