

Top Five Labor Law Developments for July 2023

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1. *The National Labor Relations Board revised its standard for assessing whether an employer's work rules unlawfully restrict protected employee activity under the National Labor Relations Act. [Stericycle, Inc.](#), 372 NLRB No. 113 (Aug. 2, 2023).* The decision reinstates a modified version of the case-by-case approach outlined in *Lutheran Heritage*, 343 NLRB No. 646 (2004), and abandons the Trump-era Board's category-based approach set forth in *Boeing Co.*, 365 NLRB No. 154 (2017). Work rules will be presumptively unlawful if they have a "reasonable tendency" to chill employees from exercising their organizing rights or otherwise have a coercive meaning. The burden will be on the employer to prove that its "legitimate and substantial business interests cannot be accomplished with a more narrowly tailored rule."
2. *The U.S. Senate recessed without confirming Democratic Board Member Gwynne Wilcox to a second term.* President Joe Biden nominated Wilcox for a second term in June and the Senate Health, Education, Labor and Pensions (HELP) Committee approved the nomination. However, a full Senate vote is still needed for confirmation to the five-member Board, which will have to wait until the Senate reconvenes in September. Wilcox's term will expire on August 27, 2023, and the Board will have its second vacancy following former Member John Ring's retirement in late-2022. The Board will still have a quorum to issue decisions, and all cases will be determined by a 2-1 Democrat majority in the interim. A Republican nominee for the second vacancy has not yet been announced.
3. *A new Department of Labor rule will require additional disclosures for employers who use consultants to persuade employees against unionizing.* Effective for reports filed on or after August 28, 2023, the rule requires employers to disclose their federal contractor or subcontractor status on the Office of Labor-Management Standards' form (Form LM-10) for persuader activities. Covered employers also will be required to report additional information, including the federal agencies with which they contract. The rule was previously suggested by a Biden Administration panel created to encourage union organizing.
4. *More than 650,000 workers have threatened to strike this summer, according to a Bloomberg Law report.* Even before the increased summer strike activity, strikes were up in the first half of 2023. In fact, a Bloomberg report released earlier this year signaled a likelihood of an increase in work stoppages, as more than 100 collective bargaining agreements representing at least 1.6 million workers are expiring or have expired in 2023. Consequently, unions and their workers have seized the opportunity to strike — or threatened to do so — as leverage in negotiations. Strikes can have significant nationwide consequences, as the potential shutdown of various sectors could have drastic effects for the U.S. and global economy.



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5. *Yellow Corp. trucking company shuts down operations after unsuccessful labor negotiations with the International Brotherhood of Teamsters.* The shutdown follows Yellow's initial failure to make a \$50 million payment for employee health and pension contributions, which resulted in its unionized workers threatening to strike. The company blamed the union's refusal to negotiate critical restructuring plans that it maintained were necessary to stay afloat. Yellow employs approximately 30,000 workers, with over one-third of the company being union members. The company has filed for bankruptcy, which may impact its requirements under the collective bargaining agreement.

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