

Illinois Labor Disputes Act Amended

By Gregory H. Andrews, Thomas E. Berry &

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Meet the Authors

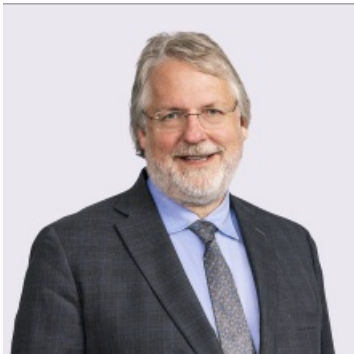


Gregory H. Andrews

Principal

(312) 787-4949

Gregory.Andrews@jacksonlewis.com



Thomas E. Berry

Principal

(314) 827-3951

Tom.Berry@jacksonlewis.com

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Labor Relations

Illinois has enacted two amendments to its Labor Disputes Act (820 ILCS 5). The first, HB 2907 ([P.A. 103-0040](#)), limits the amount of monetary damages an employer can recover stemming from a labor dispute. The second, HB 3396 ([P.A. 103-0045](#)), makes it a Class A misdemeanor with a minimum fine of \$500 for anyone to place an object in the public way with the intention of interfering with, obstructing, or impeding a picket or other demonstration or protest.

The amendments were signed into law by Illinois Governor J.B. Pritzker and will go into effect on January 1, 2024.

Illinois Labor Dispute Act (ILDA)

The ILDA provides striking workers and peaceful picketers substantial rights and protections. It precludes Illinois courts from granting restraining orders and injunctions when picketing in connection with any dispute concerning terms and conditions of employment is peaceful, does not involve threats or intimidation, and would restrain anyone from:

- Terminating an employment relationship or ceasing to perform work;
- Peaceably and without threats or intimidation, recommending, advising or persuading others to do so;
- Peaceably and without threats or intimidation, being on any public thoroughfare to obtain or communicate information;
- Peaceably and without threats or intimidation, persuading any person or persons to work or not work; or
- Peaceably and without threats or intimidation, ceasing to employ any party to a labor dispute, or recommending, advising or persuading others to do so.

Further, the ILDA grants peaceful picketers and protestors the right to use the “public right of way” to publicize a labor dispute. The term is broadly defined to include sidewalks, portions of a street, or the area between the street and adjacent property lines. Picketers are generally allowed to erect temporary signs, park several vehicles, and build tents and other shelters for the “health, welfare, personal safety, and well-being of the picketers” in the public right of way. Thus, in practice, various activities of peaceful picketers and protestors in close physical proximity to an employer’s facility or location may disrupt the employer’s operations.

Practical Implications

It is not clear if the amendments will change the ways picketing activity are conducted in Illinois as they do not change or broaden the scope of what constitutes protected picketing activity. Picketers must still abide by the same standards of conduct to continue to enjoy the rights afforded to them by the ILDA.

With the enactment of HB 2907, along with prohibiting restraining orders and injunctions of peaceful picketing and protesting, the ILDA will prohibit state courts from

awarding an employer monetary damage in cases stemming from a labor dispute, except when the employer suffers damage to its property because of conduct not protected by the ILDA. Importantly, the standard for state court injunctions involving picketing situations is unchanged. While the ILDA precludes restraining orders and injunctions involving peaceful picketing activity, picketing activity involving violence, coercion, and intimidation is not protected and may be enjoined by state courts.

HB 3396 exposes an employer to Class A misdemeanor charges with a minimum \$500 fine if an employer's representative or other company agent places an object in the public way with the intention of interfering with, obstructing, or impeding a peaceful picket or protest. Employers should ensure their representatives and agents understand the scope of picketers' rights regarding access and activities to minimize the risk.

The ILDA amendments reinforce that Illinois employers should understand the law, their legal options, and have a plan for responding to strike and picketing situations.

Potential Conflict With Federal Labor Law

The ILDA amendments may be challenged in litigation for conflicting with or affecting National Labor Relations Act (NLRA) rights or procedures. The U.S. Supreme Court has long recognized under the *Garmon* preemption that the NLRA preempts states from regulating conduct that is arguably protected or prohibited by the NLRA. *San Diego Bldg. Trades Council Local 2620 v. Garmon*, 359 U.S. 236 (1959). The NLRA generally protects (thus, has primary jurisdiction over) a private sector employee's right to engage in concerted activity such as strikes and picketing activities. 29 USC § 157.

In *Glacier Northwest, Inc. v. International Brotherhood of Teamsters*, 143 S.Ct. 1404, 1411 (2023), the U.S. Supreme Court held that the employer's state law tort claims alleging a union intentionally destroyed the employer's property during a labor dispute were not preempted by the NLRA. Against this backdrop, HB 2907's restrictions on the relief available to an employer related to picketing activity and HB 3396's imposition of state-law claims on employers for conduct in response to picketing activity may be challenged on NLRA-preemption grounds. Employers should be aware of any developments regarding potential federal preemption challenges to the ILDA amendments to assess how best to prepare for and respond to any strike or picketing activities.

Please contact a Jackson Lewis attorney with any questions.

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