

Top Five Labor Law Developments for October 2023

By Jonathan J. Spitz, Richard F. Vitarelli, Nicholas A. Scotto & Lorien E. Schoenstedt

November 3, 2023

Meet the Authors



Jonathan J. Spitz

(He/Him • Jon)

Principal

(404) 586-1835

Jonathan.Spitz@jacksonlewis.com



Richard F. Vitarelli

Principal

860-331-1553

Richard.Vitarelli@jacksonlewis.com



Nicholas A. Scotto

1. *The National Labor Relations Board issued its new joint-employer rule.* The **Final Rule** comes after the Board has repeatedly changed its position on when two independent companies are joint employers under the National Labor Relations Act for nearly a decade. The Biden Board initially issued its Notice of Proposed Rulemaking on the issue more than a year ago. The Final Rule largely centers on the degree to which one employer must retain the right to control another entity's employees' essential terms and conditions of employment. The Final Rule provides that an entity's "reserved" authority or "indirect" control over the employees of another with respect to an essential term and condition, regardless of whether that control is actually exercised, can establish joint-employer status. The joint-employer analysis has significant implications for employers, as it determines when one entity can be held liable for the other's unfair labor practices or when an entity is required to engage in collective bargaining with respect to certain terms or conditions of employment. The Final Rule's effective date is December 26, 2023.
2. *The United Auto Workers (UAW) reached tentative agreements with all "Big Three" automakers.* The agreements provide 25% increases in base wages through April 2028, cost-of-living allowances, and improved retirement benefits. The deal will bring employees' top wages to more than \$40 per hour by the end of the four-year contracts. The UAW also won key concessions regarding job security, wage tiers, the transition to electric vehicles, and unionizing battery plants. UAW President Shawn Fain had previously threatened to expand the strike to more plants or facilities if the parties did not make progress at the bargaining table. While employees at all three companies must still ratify their respective agreements, they will return to work during the ratification period, thus ending the six-week strike that involved almost 50,000 workers. It is estimated that the strike has cost the U.S. economy billions of dollars.
3. *According to a Board report, union election petitions increased by 3% in the past year.* Petitions increased from 2,510 in fiscal year (FY) 2022 to 2,594 in FY 2023. Unfair labor practice charges increased 10%, from 17,988 filings to 19,854 filings. The Board also highlighted a rise in employer-filed "RM" petitions for an election following a Board decision requiring employers to file a petition to dispute a union's demand for recognition. The Board noted the uptick in activity has resulted in increased workload for the agency. Nonetheless, the Board processed more cases this year than last year during the same time period despite shrinking staffing levels. Unions won 76% of their elections in FY 2023, an increase from 72% in FY 2022.

Associate
(212) 545-4066
Nicholas.Scotto@jacksonlewis.com



Lorien E. Schoenstedt

KM Attorney
312-803-2516
Lorien.Schoenstedt@jacksonlewis.com

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4. *The California Governor Gavin Newsom vetoed a bill to provide striking workers unemployment insurance (UI) benefits.* The bill would have made striking workers eligible for UI benefit after the first two weeks of a strike. In his veto message to the California State Senate, Newsom explained that any expansion of eligibility for benefits from the state's UI Trust Fund could make it more vulnerable to insolvency. He also noted that expanding UI benefits to striking workers could increase California's outstanding federal UI debt, which is already projected to reach approximately \$20 billion by the end of the year. New York and New Jersey are the only states to offer unemployment benefits to striking workers.
5. *The Allina Health Systems physicians voted to unionize, becoming the largest doctors' union in the country.* The newly unionized group, comprised of nearly 600 physicians, nurse practitioners, and physician assistants across Wisconsin and Minnesota, voted 325-200 to be represented by the Doctors Council, a Service Employees International Union (SEIU) local. The medical professionals cited understaffing, patient safety, and burnout as motivating factors for seeking unionization. The parties will begin contract negotiations for a first collective bargaining agreement.

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

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