Newsletter

Top Five Labor Law Developments for August 2024

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1. *The National Labor Relations Board will no longer accept "consent orders" to resolve unfair labor practice cases when terms are objected to by the charging party or Board general counsel.* *Metro Health, Inc. d/b/a Hospital Metropolitano Rio Piedras*, 373 NLRB No. 89 (Aug. 22, 2024). Unlike a traditional settlement, a consent order is not agreed upon by all parties. Rather, the respondent — typically an employer — proposes the consent order and then it is approved by an administrative law judge if the terms are reasonable. According to a Board press release, the practice "fails to serve the goal of the National Labor Relations Act because it does not facilitate a truly mutual resolution of labor disputes." The Board also explained that not only do its Rules and Regulations not mention the term "consent order," but appear to prohibit their use entirely. The Board noted it will continue to accept "true settlement agreements" between parties that align with the policies of the Act.

2. *The Board's general counsel issued a memo providing guidance to academic institutions on complying with labor and privacy laws.* Memorandum GC 24-06 (Aug. 6, 2024). The memo clarifies the requirements of both the Act and the Family Educational Rights and Privacy Act (FERPA) in cases involving the duty to furnish information where both statutes may be implicated. It also details steps academic institutions should follow when responding to requests for certain student-related information. Such information requests typically arise when unions attempt to organize students. Institutions should consider obtaining FERPA consents from student-employees during employment onboarding to streamline their responses to the surge of information requests that may relate to representation and union elections, unfair labor practice proceedings, or other organizing activity.

3. *Illinois enacted the Worker Freedom of Speech Act prohibiting "captive audience" meetings.* Illinois joined several other states, including Connecticut, Hawaii, New York, and Oregon, in limiting employers' ability to conduct mandatory meetings on religious or political matters, including on unionization. Under the new law, employers cannot discipline or incentivize employees to attend such meetings or listen to related communications. Employees can sue for violations, and the Illinois Department of Labor can impose penalties. Employers must post notices about the law's protections. The law faces legal challenges, however, including claims it violates employers' freedom of speech and is preempted by the Act. The law is scheduled to go into effect Jan. 1, 2025.

4. *According to a new Gallup survey, public approval of labor unions increased to 70 percent in 2024.* The approval rating is a four percent increase from last year, which had a slight dip from 2022's record high of 71 percent. Only 23 percent of Americans stated they disapproved of labor unions, falling to a 57-year low. The

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high approval rating follows the Board reporting a significant increase in union activity, including a 35 percent increase in union election petitions during the first six months of fiscal year 2024. Although union activity and support remain high, union membership is at its lowest in decades. Unions have not grown membership enough to increase the national membership percentage rate.

5. *The U.S. Court of Appeals for the Sixth Circuit upheld the president's authority to remove the Board general counsel at will; declines judicial deference to the Board.* ***Rieth-Riley Construction Co. v. NLRB***, No. 23-1899/1946 (6th Cir. Aug. 14, 2024). President Joe Biden terminated the Board's Trump-era General Counsel Peter Robb on Inauguration Day, leading to lawsuits challenging the validity of the removal. Although it agreed with the Board's view that the removal of the general counsel was legal, the court cited the recent U.S. Supreme Court's ruling overturning court deference to federal agencies and stated it does not defer to the Board's interpretation of the Act but exercises "independent judgment in deciding whether an agency acted within its statutory authority." While the decision highlights the president's authority to appoint and remove executive officers, it also provides important insights into how the Sixth Circuit may handle questions of deference to the Board.

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