



What Should You Do Now to Prepare for Union Organizing?

As we have seen in recent months, labor unions are aggressively organizing across all sectors of our economy, including industries that have been largely immune from such activity. Against this backdrop, organized labor has leveraged a favorable regulatory environment with a decidedly pro-union agenda.

A strong economy combined with years of union membership decline have lulled employers into a sense of complacency that is now being tested. In preparation for a potential union organizing campaign, it is critical to enhance your Preventive Labor Relations Program while there's still time. Here are some important touchpoints to consider:

IMPROVE YOUR EMPLOYEE RELATIONS “INFRASTRUCTURE”

- ☑ **1. Update policies and procedures to recapture flexibility.** The National Labor Relations Board has already begun to restrict management flexibility when it comes to enforcing work rules, and we can expect that trend to continue. Now more than ever, it is important to update workplace policies and procedures governing employee relations, workplace misconduct, harassment, solicitation, distribution, access, social media, workplace recording, electronic communications, class waivers and other rules.
- ☑ **2. Address employee concerns.** While it may be impossible to make everyone happy, you can take steps to ensure that employees do not feel neglected. Publish step-by-step procedures to address issue resolution and problem-solving needs, with “special” bypass provisions to address workplace safety, EEO, harassment and retaliation claims in a timely manner. Build internal accountability into the system.
- ☑ **3. Reestablish management credibility.** Employees often complain that “they only see management when the union is around.” Challenge supervisors to apply positive employee relations principles as workers return to the workplace. Take steps to ensure that your local leadership team is available and accessible long before unions solicit employees to sign authorization cards.
- ☑ **4. Promote two-way communications that are not dependent on large group meetings.** Expand all credible small group communication channels to underscore the advantages of direct working relationships within the unique aspects of your workplace, and the corresponding risks that may come with third party representation. In addition to in-person meetings, consider social media vehicles, texting, app-based communications, hotlines, and lawful employee committees.
- ☑ **5. Educate employees on your business model.** Utilize comprehensive messaging programs to educate employees on important matters relevant to your business challenges and opportunities, so they are accustomed to such communications well before they are approached by a third party.

- 6. Make safety a top priority.** Preempt any attempt to leverage workplace safety concerns by emphasizing your commitment to a safe and hygienic workplace. Underscore your efforts to mitigate against the risk of workplace infection by soliciting input to continuously improve protocols. Underscore your commitment by: (1) Increasing visibility of internal professionals accountable for spearheading health and safety efforts; (2) Updating written safety rules to address hygiene concerns; (3) Regularly training employees on safe work practices; (4) Rewarding safe behavior (and counseling against unsafe practices); and, (5) Establishing lawful safety committees.
- 7. Make “fair” employment decisions.** Limit perceptions of unfair treatment by: (1) Treating employees with dignity and respect; (2) Communicating and consistently enforcing policies, rules and expectations; (3) Giving employees sufficient notice of deficiencies; (4) Investigating before acting; (5) Considering (but not promising) progressive discipline; and (6) Providing advance notice of any significant changes. Explore peer review and other internal “appeal” procedures.
- 8. Attract and retain a quality and diverse workforce.** As you struggle to maintain full staffing levels, it is important to attract and retain a diverse workforce that can bring different voices and perspectives into your workplace.
- 9. Maintain a competitive economic package.** Unions rarely succeed by focusing on wages and benefits alone, but employers must continually strive to maintain a package that is competitive by area and industry standards. By the same token, it remains critical to: (1) Comply with all wage payment laws; (2) Explain pay plans to employees in clear terms; (3) Promote the favorable aspects and “hidden value” of your benefits package; (4) Promptly resolve all pay issues; and (5) Regularly survey area and industry wages to ensure that they remain competitive.
- 10. Regularly adapt your employee relations program to the latest developments.** Now is the time to consider pulse surveys, focus groups, 360 assessments and related tools. Ongoing safety and job security concerns are inevitable. These issues are likely to converge with pay, benefits, consistency, fairness, and other concerns associated with workplace unrest. Successful employers will remain vigilant in critically and systematically identifying all employee concerns.

TAKE THESE ADDITIONAL PROACTIVE STEPS NOW

- 1. Assess your vulnerability to union organizing.** One of your highest priorities should be to assess your current vulnerability to union organizing. Identify and resolve all sources of lingering workplace anxiety. Review the Fisher Phillips Labor Relations Forward Looking Labor Relations Audit and consider conducting a comprehensive “vulnerability audit.”
- 2. Think strategically about potential “bargaining unit” issues.** Analyze potential bargaining unit issues that may arise given the unique aspects of your workplace. For example, are your operations vulnerable to organizing on a “micro-unit” basis? What practical steps can you implement now to avoid that? Who are your statutory supervisors? Do you have viable multi-location, functional integration, joint employer, or independent contractor issues? Are you prepared to lawfully and appropriately respond to a union bargaining demand?
- 3. Train supervisors to articulate your employee relations philosophy.** When it comes to union organizing, supervisors are your first line of defense or your first line of exposure. Social distancing restrictions may continue to impede conventional management training approaches in the short term, but virtual and electronic programs remain effective. Whether your management team is trained in person or otherwise, they should be conversant on: (1) The reasons why you prefer to operate as a union-free organization; (2) Their status as legal agents; (3) Their “free speech” rights; (4) What they should (and should not) say to employees to avoid committing unfair labor practices; (5) How to recognize the early warning signs of union activity; and, (6) What they can lawfully do in response.

- ☑ **4. Establish an effective “Rapid Response Team.”** Train your most effective supervisory communicators on:
(1) Effective approaches to lawfully communicate on issues that resonate with your employees; (2) How to anticipate and respond to union tactics; (3) Effective measures for complying with the latest NLRB guidance governing captive audience meetings and related restrictions; and (4) The resources available to understand the benefits of working directly with your management team. Your Rapid Response Team should be prepared to “hit the ground” running by communicating directly with employees within hours of being deployed.
- ☑ **5. Prepare a pro forma campaign calendar and formalized communications on anticipated “hot button” issues.** Consider a broad array of communication vehicles, ranging from posters, handouts, videos, and letters to homes, to FAQs and meeting scripts on key issues that can be implemented on short notice within compressed time periods. Consider the increased prospect of “mail ballots” – given the NLRB’s ongoing presumptions in favor of conducting elections through mail ballots.
- ☑ **6. Make logistical arrangements.** Anticipate how, where and when you will communicate with employees. Formalize logistical arrangements to ensure that communications are widely distributed and effective. Don’t shy away from critical questions, such as: (1) Do you have secured physical and virtual bulletin boards in place? (2) Do you have an established employee intranet portal? (3) Do employees have access to computers and electronic communications systems? (4) Do you have the means to send letters to employee homes on a timely basis? (5) Can you take advantage of advanced technology to enhance the effectiveness of employee communications?
- ☑ **7. Orient new employees on your employee relations philosophy.** As you on-board new employees, consider lawfully and effectively explaining the factors driving your desire to remain union-free. Generate early awareness over the prospects of authorization card solicitation, the significance of such cards, and the risks they may present for employees.
- ☑ **8. Explain your position on third-party representation.** Educate employees about unions, the risks associated with collective bargaining, and the benefits of dealing directly with their management team. Review your employee relations policy statement and provide employees with answers to frequently asked questions. Train employees on the myths and “half-truths” that precipitate authorization cards, including the legal process and the risks that come with union representation.
- ☑ **9. Conduct security audits.** Assess the security of your parking lots, buildings, and other physical premises. Consider fencing, enhanced lighting and access control systems to properly regulate movement into and within the premises. Establish appropriate signage to prevent trespassing and unwanted solicitation. Audit your electronic communications and other systems to protect intellectual property and confidential information including names, phone numbers, and e-mail addresses.
- ☑ **10. Build your image within the community.** Foster employee pride and identity with your organization, thereby reducing the tendency to identify with others outside the organization. By the same token, look for early opportunities to engage in team-building exercises.
- ☑ **11. Think outside the box when it comes to closing any communications gaps.** Social distancing guidelines, telework initiatives, and other inevitable workplace changes will present their share of communication challenges. Businesses that fail to adapt to those changes risk ceding their tactical communication advantages to organized labor. Employers that embrace the challenges by leveraging interactive video, intranet, web-based platforms, etc., are far more likely to weather the coming storm.

CONCLUSION

The ever-changing economy and workforce present serious challenges for employers, but this is no time to panic. While these developments have significant ramifications, they will not necessarily change how unions go about organizing your employees, nor will they impact the factors that traditionally make employers vulnerable. Consequently, opportunities remain for those businesses that are willing to take a proactive and systematic approach.

Those organizations that get ahead of the curve by evaluating the impact of these developments on their existing labor relations model will be better positioned to withstand these challenges for years to come. No single “off-the-shelf” action plan can prepare you for these developments. Every organization must analyze its own workforce, industry, location, resources, and other factors, before tailoring a sustainable plan.

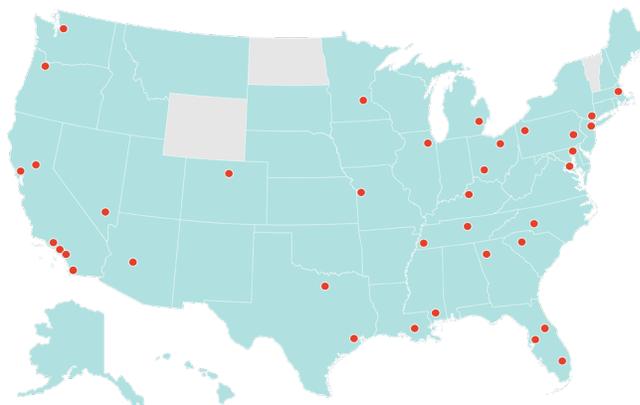
Your labor relations attorneys at Fisher Phillips have been evaluating these developments from the inception of the pandemic, and they stand ready to partner with you in tailoring a plan that fits the unique aspects of your corporate culture on a privileged basis. Feel free to call us at your earliest convenience to help kick start that process.

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