



White House Labor Task Force Issues Report on “Worker Organizing and Empowerment”: What Employers Should Know and Do

Insights

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The White House Task Force on Worker Organizing and Empowerment recently issued a Report to the President that lays the groundwork for significant changes in the labor relations field over the next several years. When the Task Force was created in May 2021, there were questions as to whether it would result in any real changes. Now that the Task Force Report has issued its February 7 report, there are still questions as to what the end results will be. However, it is clear that the employers should consider the Task Force recommendations and determine if any immediate actions are needed to prepare for the turbulent times that await this landscape.

Empowering Workers and Removing Organizing Barriers

The Report recommendations are intended to “use the existing authorities of the Executive Branch to empower workers and to remove longstanding barriers to organizing.” This involves positioning the federal government as a “model employer” (making it as union friendly as possible) and bolstering federal agency enforcement of worker rights (ensuring agency rules, regulations, and enforcement are pro-union).

Within these two goals, the Task Force’s recommendations can be broken down into three main categories: (1) increasing the number of available union members (which will increase available dues payers); (2) limiting employers’ ability to lawfully share information and help employees make an informed decision on unionization; and (3) ensure effectiveness of the collective bargaining process (to eliminate impasse). For now, employers need to understand how the Task Force’s recommendations to achieve these goals could affect them.

Recommendations to Increase Union Membership

The Task Force report correctly recognizes that membership in U.S. labor unions continues to decline. Because unions need dues paying members to survive, any effort intended to support U.S. unions needs to make adding members a priority. It is clear the Task Force’s recommendations do this. Some of the more significant recommendations include:

- When the Report discusses making the federal government a “model employer,” it literally means making sure that the number of federal employees belonging to a union and paying union dues is maximized. To do this, the recommendations for current and future federal employees include: increasing exposure to unions during the hiring and on-boarding process, giving unions increased access and ability to communicate with employees, making it easier to become a dues paying member, training managers and supervisors to be neutral during union organizing campaigns, implementing comprehensive communication strategies, highlighting the “benefits” of unions, and evaluating whether non-bargaining unit positions are correctly excluded from bargaining unit coverage.
- Revising federal regulations to allow, if not encourage, union access and organizing of employees of private business performing work in federal government facilities.
- In the private sector, one way to increase union membership is to increase the number of people who can be defined as “employees” and, therefore, eligible to become dues paying union members. The Report does this by recommending that federal and state agencies use “rigorous enforcement” to prevent “workers” from being misclassified as independent contractors.

Recommendations to Limit Employers’ Ability to Lawfully Share Information

For years, pro-union administrations and federal agencies have characterized employer efforts to lawfully communicate unionization as being “union busting.” The pro-union narrative is that any effort to help employees make an informed decision on union representation is characterized as either unlawful, threatening, or coercive. Based on years of experience, unions know that if employees can evaluate all the facts on union representation, they are more likely to decide to deal directly with their employer. The Report recommendations to make it harder for employers to share information include:

- Instructing the Department of Labor (DOL) to take “all appropriate actions” to strengthen its rules and enforcement efforts with respect to persuader activity — signaling an effort to revive the Obama-era regulation which would require employers to report any assistance rendered by labor consultants, including labor counsel, that is “undertaken with an object, directly or indirectly, to persuade employees about how to exercise their rights to union representation and collective bargaining.”
- Instructing the Department of Defense to do more to inform contracting officials about Executive Order No. 13494 (and its implementing regulations), holding that costs concerning activities undertaken to persuade employees to either exercise or not exercise their right to organize and bargain collectively cannot be paid with federal contracting funds.
- Working with the Office of Tax Policy at the Treasury Department on legislative tax proposals that could have the effect of denying deductions for expenses paid or incurred by employers or other taxpayers to further activities that impede or inhibit workers’ efforts to organize or participate in union organization.

- Making it more difficult, if not impossible, for employers to obtain federal funding if they exercise their lawful right to speak out against unionization or provide information which might be perceived as attempting to persuade employees not to unionize.

Recommendations to Improve Effectiveness of Collective Bargaining

A reality of union representation is the fact that while a union can make promises to get votes, there are no guarantees with collective bargaining. In fact, if a newly elected union is unable to achieve a collective bargaining agreement within a year, that union is susceptible to getting voted out. While employers are obligated to bargain in good faith, they are not legally obligated to accept any specific union demands nor agree to a contract. For pro-union administrations and labor organizations, this collective bargaining process is flawed and limits the ability to bring in new members. The Report recommendations aimed at eliminating this impediment include:

- Passing regulations that would urge, or perhaps require, all federal contractors to engage the Federal Mediation and Conciliation Service (FMCS) to help mediate negotiations to reach a first collective bargaining agreement with newly certified unions.
- Having the NLRB develop a standard letter to send the employer and union for newly certified units, with a copy to the FMCS.
- When notified of newly organized unit, the FMCS will “promptly” reach out to the employer and the union and introduce them to its services, offer to provide training for first-time negotiations, and offer mediation services.

What to Do Now

Despite all the recommendations pushing employees toward unionization, there are effective strategies an employer can use to help ensure a positive employee relations environment. Employers who feel that an employee relations process that involves working together directly with their employees, without third-party representation, may want to consider focusing on three main areas.

- First, the main priority should always be making sure that current and future employees have **effective methods and processes for communicating issues and concerns and providing input on operations**. Employees who have regular and effective methods for communications and providing input certainly do not feel the need to pay a third party for representation.
- Second, given the federal government’s efforts to expand the number of people who be eligible for union representation by expanding the definition of “employee,” employers should have a **good understanding of their workforce and the duties and responsibilities of employees they believe could be part of a bargaining unit and those they believe should be excluded**. If the line between included and excluded is not clear, it will be important to determine exactly how such issues should be addressed.

- Third, because it is clear the federal government will continue to take steps to limit and restrict an employer’s ability to lawfully provide information to employees during a union organizing drive, it will be very important for employers to **plan in advance and determine exactly how they will communicate with employees, who will do the communications, and what information they will lawfully provide.**

Conclusion

The Task Force Report and Recommendations will result in various changes that will impact employers to one degree or the other. For now, there is time to evaluate what will and could happen to determine if adjustments are needed. All effective employee relations programs need to make adjustments and improvements based on legal and human resources changes. The release of the Labor Task Force Report seems to be a good opportunity to do this.

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