Strike Activity and Union Organizing Expected to Increase Significantly Again in 2023: How Employers Can Prepare

Insights
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The year that just wrapped up was one of the most tumultuous in recent memory when it came to strike activity and union organizing – and we're expecting more of the same in 2023. Indeed, we saw increases in labor actions, strikes, major work stoppages, and union representation petitions. This activity was fueled by a unique combination of shaky economic terrain and an unabashedly pro-labor White House clearing the path for unions. These conditions should continue for most of this coming year, meaning you can be sure of a repeat over the next 12 months. What can employers do to be post position yourself for what's certain to be a bumpy ride?

2022 Year in Review

2022 saw a significant uptick in employee activism and work stoppages throughout the country. For many, as existing contracts expired or neared expiration, workers used the dynamic as bargaining leverage. A significant portion then ultimately resorted to work stoppages when their demands were not met. In fact, there were approximately 380 strikes involving more than 200,000 workers in 2022, according to the "labor action" tracker maintained by Cornell University's School of Industrial and Labor Relations. By contrast, there were "only" 265 work stoppages in 2021 involving approximately 140,000 workers. That amounts to a 43% increase in both strikes and workers involved.

According to preliminary data from the Bureau of Labor Statistics, 22 of these work stoppages qualified as "major work stoppages" — meaning they involved 1,000 or more workers and lasted one full shift or longer. This was an increase from the 16 major work stoppages we saw in 2021. Included among last year's major work stoppages were the largest ever strike of nurses in the private sector and the largest-ever higher education workers strike involving the University of California and the United Auto Workers union. These continued trends of healthcare and higher education made up a significant portion of strike activity in 2022.

We also saw some high-profile close calls in 2022, including a potential strike of approximately 100,000 rail workers which would have been felt in all corners of the country, if not the world – impacting fuel prices, crops/grocery supply chain issues, passenger train transportation and even retail goods availability and pricing.

Beyond strike activity, there were 2,510 union representation petitions filed with National Labor Relations Board in fiscal year 2022 – the highest number since 2016 and a 53% increase from 2021, according to press release issued by the NLRB. Petitions resulting in actual union elections also increased in 2022 to approximately 1,250 elections (50% increase from 2021). Workers voted in favor of unions in nearly 3 out of every 4 elections, also up from approximately 3 out of every 5 elections in 2021.

What's Behind This Marked Increase?

Recall that President Biden promised to be the "most pro-union president" in history. Well, the administration and the NLRB are doing all that they can to follow up on that promise, and organized labor is capitalizing on this partnership.

For example, in 2022, the NLRB achieved the following:

- It issued new pro-union rules concerning joint employment and "blocking" charges;
- The agency overturned previously pro-employer case law regarding property access for third-party contractors;
- It returned to unions the ability to organize smaller bargaining units known as "micro units;" and
- Expanded remedies available to employees when unfair labor practices are committed.

This also comes as public support for unions is at its highest point since 1965. According to a Gallup poll conducted earlier in 2022, 71% of Americans now say they approve of labor unions.

We also saw a very low unemployment rate in 2022, which historically has been the environment in which unionization efforts were able to thrive. This resulted in more job openings and fewer available workers, all on the heels of the COVID-19 pandemic. And as we all know, the last few years have caused many workers to think differently about issues beyond just wages, such as workplace safety and overall quality of life. This has ultimately turned workers to unions to leverage this newfound bargaining power.

What's on the Horizon in 2023?

We do not expect this trend to slow in 2023. Indeed, the year has already kicked off with another significant strike in the healthcare industry, this time impacting more than 7,000 nurses at two New York City hospitals.

The NLRB will continue its trend of making it easier for employees to organize and will further shift federal labor policy in workers' favor. The Board is preparing to issue decisions involving some major policy shifts by reexamining workplace civility rules, prohibiting mandatory employee education meetings during union organizing drives, expanding the definition of 'employee' to capture more workers currently classified as independent contractors, and allowing union organizers to access/use an employer's email system.

We'll also likely continue to see significant media attention and public interest on labor relations throughout the country. This includes another professional sports league (the NBA) approaching the expiration of its collective bargaining agreement with the players' association. While we do not anticipate a similar level of public disagreement and conflict as we did with the Major League Baseball lockout, the NBA negotiations will put more public spotlight on the collective bargaining process.

This increased media attention will also come at a time when at least 150 major union contracts are set to expire in 2023, involving more than 1.5 million workers at the Detroit automakers, UPS, and SAG-AFTRA performers, according to an analysis conducted by Bloomberg Law. We anticipate this will lead to another significant uptick in strike activity if employers do not meet worker demands. However, the impending Supreme Court decision in *Glacier Northwest, Inc. v. International Brotherhood of Teamsters* could cool unions' enthusiasm for striking if it is clear they may be held responsible for employer economic losses during a strike.

What Does it All Mean for Employers?

Employers with unionized workplaces should have a detailed plan together so you are prepared to respond immediately and efficiently to union organizing and work stoppages.

From the strike preparation front, this includes everything from identifying reasonable goals in collective bargaining to preparing a strike contingency plan, particularly where you intend to continue operating its business during the strike. With interest rates continuing to climb and many prognosticators pointing in the direction of a recession, bargaining leverage may be re-balanced in the coming year. But employee expectations may continue to remain high, resulting in a disproportionately high number of strikes.

From the organizing perspective, the increase in union organizing efforts and elections should be a wakeup call to non-unionized employers — and YES, even those in industries and areas of the country not historically associated with labor unions, and even those in right-to-work states. During times like these, all employers would benefit from an improved employee-engagement and communication system.

Employers, therefore, should remain focused on and committed to building trust with employees. This includes opening and maintaining effective lines of communication, developing and consistently applying work-related policies and procedures, instituting effective complaint resolution processes, and proactively reviewing wage and benefit packages to ensure you remain competitive within your industry and geographic location.

Conclusion

We will continue to monitor the situation and provide updates as more information becomes available. Make sure you are subscribed to Fisher Phillips' Insight system to get the most up-todate information. Any questions may be directed to your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Labor Relations Practice Group.

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