



Starbucks Asks SCOTUS for Clearer Standard for NLRB Injunctions: What Employers Need to Know

Insights

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In a case before the Supreme Court, Starbucks says it fired several employees for violating valid company policies — but the National Labor Relations Board convinced a lower court to reinstate the employees while a legal battle ensues over whether they were actually fired for engaging in union organizing activities. The coffee chain argues the lower court applied an incorrect standard in evaluating the Board’s request to reinstate the employees, which ultimately made it easier for the workers to be reinstated despite evidence they were fired for hosting media interviews afterhours in a closed store. So, what standard should be applied? The Supreme Court recently agreed to take up the case and decide whether courts must use a traditional, more stringent test to review such requests from the NLRB or whether they may apply a lenient standard pushed by the Board. Here’s what you need to know about the *Starbucks Corp. v. McKinney* case ahead of oral arguments on April 23.

What Led to the Lawsuit?

- **Starbucks fired workers for violating company policy.** Several employees who worked at a Memphis location of the coffee chain conducted a media event after the store was closed and while some on-duty employees were supposed to be engaged in closing procedures — including cash handling. Additionally, a few off-duty employees were behind the bar when the safe was unsecured during the closing process, which violates company policy. The company says employees are not allowed to let unauthorized people into the stores when they are closed, including off-duty employees, yet the group hosted news crews for about an hour with the door locked behind them. This is not disputed.
- **Workers filed NLRB complaint.** The employees claimed that they were actually fired for engaging in protected activity under the National Labor Relations Act and filed charges with the NLRB alleging the company committed unfair labor practices.
- **Labor Board asked court to reinstate workers.** While the case was pending, the NLRB asked a federal district court to provide the workers with temporary relief in the form of an injunction, which included an order to reinstate the fired employees within five days.
- **Lower courts sided with Labor Board.** The district court held the NLRB met its “relatively insubstantial burden to establish reasonable cause” — and the 6th U.S. Circuit Court of Appeals upheld the ruling.

- **Starbucks appealed to SCOTUS.** The company says the NLRB should be held to a consistent standard, and the 6th Circuit departed from the traditional test used in such cases. “Furthermore, the NLRB alone controls how long their proceedings last, so an injunction can force an employer to operate under a federal court order for years as those proceedings play out,” Starbucks said in a statement.

What is SCOTUS Deciding?

Under Section 10(j) of the NLRA, the Board can ask a federal district court to order certain temporary measures, like reinstating employees, while an unfair labor practice claim is being litigated. The NLRB says these temporary injunctions—called 10(j) injunctions—help protect employees’ rights.

There is a disagreement, however, among federal appeals courts on how requests for injunctive relief under Section 10(j) should be evaluated, with some courts applying a traditional, strict test while others have adopted a more lenient, union-friendly approach.

In this case, the 6th Circuit used the lenient two-part test, under which the Board had to only show that:

- there is “reasonable cause” to believe that an unfair labor practice occurred (which Starbucks argues is a “relatively insubstantial” standard that favors the Board); and
- relief is “just and proper.”

The 3rd, 5th, 10th, and 11th Circuits also apply this low-threshold test.

Instead of this analysis, Starbucks urges SCOTUS to side with the 4th, 7th, 8th, and 9th Circuits, which apply a traditional four-factor test that governs requests for injunctive relief in many other contexts. Under this standard, the Board is required to show:

- it is likely to succeed on the merits;
- it will likely suffer irreparable harm without preliminary relief;
- the balance of the equities tips in its favor;
- and an injunction is in the public interest.

Starbucks noted that many of the NLRB’s 10(j) injunction claims involve the coffee company, and it must defend itself under multiple legal tests with different outcomes depending on where the case is filed. “We are taking this proactive step because we believe the NLRB should be held to a consistent standard,” Starbucks said.

What’s Next and What Should Employers Do for Now?

SCOTUS will hear oral arguments in the case on April 23, and the Justices are expected to decide the issue by the end of June. The outcome of the case may impact your strategy on how to respond to union organizing activity in your workplace — but in the meantime, you should consider taking the following steps to strengthen your employee relations program:

1. **Create positive relationships with employees.** Human Resources and frontline managers should commit to developing a positive culture. Seek input from and listen to employees about their needs in the workplace and promptly respond to their concerns. Implement a regular process to confirm your wages and benefits are competitive. Use a robust communication process to remind employees of the “hidden value” of their benefits package.
2. **Share your philosophy with employees.** Lawfully educate employees on your employee relations philosophy. In doing this, understand that the legality of mandatory meetings to discuss unionization is now in jeopardy and that a decision rendering such meetings unlawful could be applied retroactively.
3. **Train supervisors and managers.** While the NLRB is rapidly shrinking the rights available to employers for lawfully responding to union activity, they retain statutory “free speech rights” to help employees make informed decisions. It is therefore more important now than ever for your statutory supervisors to understand what can be said lawfully, the importance of avoiding ULPs, and the role they play in maintaining your employee relations infrastructure.
4. **Collaborate with internal stakeholders and labor counsel** to tailor an appropriate compliance strategy around the unique aspects of your workplace.

Curious about union organizing activity in your industry or region? Our complimentary map allows you to stay up to speed on what’s happening in your own backyard in real time. [Click here for four interesting trends revealed by FP’s Union Organizing Activity Map.](#)

Conclusion

We will continue to monitor developments related to the Starbucks case and provide an update when SCOTUS issues an opinion, so make sure you subscribe to Fisher Phillips’ Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Labor Relations Practice Group.

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