

SCOTUS ONCE AGAIN UPHOLDS FIRING OF NLRB DEMOCRAT MEMBER WILCOX, BUT BATTLE WILL CONTINUE: WHAT SHOULD EMPLOYERS DO?

Insights
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The Supreme Court late yesterday permitted the Trump administration to bar former Democrat NLRB Member Gwynn Wilcox from her former position on the Board while the larger battle plays out about whether the President has the authority to terminate leaders of independent administrative agencies without cause. In a 6-3 decision, SCOTUS ruled that greater risk of harm could come if Wilcox remained on the Board and exercised executive power while her termination is under dispute than if she were to remain unable to perform her claimed statutory duty during this limbo period. The matter will now head back to federal appeals court, with briefing and argument before a resolution and a probable return trip to the Supreme Court – which might not happen for several months at least. What do employers need to know about this developing story – and what should you do while we wait it out?

Quick Timeline

Here's a quick timeline of how we arrived at this point:

- **January 27:** Trump fired Democrat Board Member Wilcox without cause and left the NLRB without a functioning quorum (read more about [the termination here](#)).
- **February 5:** Given the unprecedented nature of this termination, Wilcox filed a lawsuit to regain her job and protect Board members from terminations without cause.
- **April 7:** After conflicting rulings from a lower court and a three-judge appeals panel, the full *en banc* panel of the

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D.C. Circuit Court of Appeals ordered Wilcox back to work.

- **April 9:** Chief Justice Roberts reversed that decision and ruled that Wilcox's termination should stay in place pending a full resolution of the appeal ([read more about that here](#)).
- **Yesterday:** [In a 6-3 decision](#), SCOTUS granted a stay that blocked the D.C. *en banc*'s panel ruling from taking effect, once again barring Wilcox from her former position.

Where Do We Stand at the NLRB?

- The NLRB has been with just two of five Board members since Wilcox's termination: Republican Chair Marvin Kaplan and Democrat Member David Prouty.
- The NLRB requires a three-member quorum to issue decisions – a threshold [established](#) by the US Supreme Court in 2010. With only two members seated, the Board cannot currently adjudicate cases or set new legal precedent.
- This stalemate has halted NLRB decision-making and rulemaking for the time being. Read more about what the Board can and can't do during this limbo period [here](#).

What Will Happen Next at the NLRB?

- We expect President Trump to nominate at least one Republican member to build a working quorum at the NLRB in the near future.

What Will Happen Next in Court?

- At the same time, we expect the Government to continue to battle Wilcox at the D.C. Circuit Court of Appeals for that court's decision of whether the President has the right to terminate heads of independent agencies like the NLRB.
- Whichever way the D.C. Circuit decides, the issue will almost certainly work its way back up to the Supreme Court. But we would expect SCOTUS to wait until the 2025-2026 term to handle any such case, which means the earliest we might expect to see a final resolution on the matter should be October 2025 – but the matter could bleed into early 2026.

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- Meanwhile, a separate high-profile challenge to the NLRB's structure is pending before the 5th Circuit in the *SpaceX* case, which could independently impact the Board's authority and further complicate the legal landscape. [You can read more about that here.](#)
- It's worth noting that the Wilcox case also impacts the former Board member at the Merit Systems Protection Board (also fired by Trump).
- But the ultimate decision could also have ripple effects on other independent agencies like the Federal Trade Commission (FTC) and perhaps the Equal Employment Opportunity Commission (EEOC).

What Should You Do?

Here are some best practices for employers as we await next steps.

- **Monitor NLRB Developments:** With the Board still lacking a quorum, expect limited adjudicatory activity for the time being. But you should remain alert for administrative, rulemaking, or interim guidance from the acting General Counsel (William Cowen) or the permanent GC (Crystal Carey's nomination is pending at the Senate). The best way to stay tuned is subscribe to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox.
- **Review Current Labor Policies:** Examine your employee handbooks, work rules, and disciplinary procedures to confirm they meet the most recent NLRB standards. A management-friendly Board is expected to moderate the more extreme decisions from the Biden Board, but that transition will take time. For example, read our recent Insight: [Employers Still Need to Follow NLRB's Strict Handbook Rules – For Now.](#)
- **Maintain Open Communication With Employees:** In an environment of uncertainty, clear and regular communication helps prevent misunderstandings or union-related escalation. Reinforce any open-door policies, encourage feedback, and foster a positive workplace culture to reduce the appeal of organizing efforts.

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- **Evaluate Positive Employee Relations and Bargaining Strategies:** The unpredictable nature of future Board composition and decisions means that you should ensure your positive employee relations strategies remain legally compliant. If you are already unionized or facing union organization, anticipate that a new GC or new Board majority could revisit some of the Biden-era interpretations on bargaining obligations and employer defenses.

Conclusion

Monitor developments and be prepared for the next twist in this turbulent saga. The best way to stay tuned is subscribe to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox. You can also visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of the [Labor Relations Group](#) or [Government Relations Practice Group](#).