

# IS DARTH VADER LURING AI TO THE DARK SIDE OF LABOR LAW? WHY LATEST UNION BATTLE MEANS EMPLOYERS SHOULD PROCEED WITH CAUTION

Insights  
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A video game developer needs to hope that the Force is with it as it squares off with a union over the use of artificial intelligence in the workplace. SAG-AFTRA just filed an unfair labor practice (ULP) charge against Epic Games over the use of an AI-generated Darth Vader voice in the video game *Fortnite*, accusing the gaming giant's subsidiary, Llama Productions, of unlawfully replacing union voice actors without bargaining. The May 19 charge has ignited a high-profile clash over AI and labor rights – and serves as a warning for any employer eyeing AI as a cost-cutting replacement for human work.

## What Happened?

On May 19, SAG-AFTRA filed a ULP charge against Llama Productions, a subsidiary of Epic Games, after the popular video game *Fortnite* unveiled an AI-generated version of Darth Vader using the iconic voice of James Earl Jones. While the employer says it received the approval of the late actor's estate, the ULP alleges that Epic Games failed to consult with the union as it was supposed to.

According to the union's NLRB charge, this constituted a unilateral change to terms and conditions of employment, violating Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act. SAG-AFTRA argues this was bargaining unit work that should have gone to human voice actors, especially those who had previously voiced Darth Vader in gaming projects. But it says the employer gave no notice or opportunity to negotiate – prompting the union to take legal

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More on the story from [CNN](#), [Variety](#), [Ars Technica](#), and [Futu](#)

## The Legal Lightsaber: What's the Standard?

This is obviously a developing area of labor law given how recently AI has started to impact the workplace. But under existing federal labor law, replacing union-covered work with automated tools (which could include GenAI voice models) without bargaining is typically unlawful unless:

- The union has clearly and unmistakably **waived its right to bargain** over such changes;
- The collective bargaining agreement explicitly permits the change under a **"contract coverage" clause**; or
- The parties have **reached impasse** after good faith bargaining.

Otherwise, per a long line of NLRB precedent, employers must notify the union and bargain before replacing human labor with automation – even if the substitution seems efficient or harmless. This is particularly true when the change is material, substantial, and significant – which the union claims the voice of Darth Vader certainly is.

## Why This Case Matters

This case is about more than just *Fortnite* and *Star Wars*. It underscores a bigger issue: how AI is reshaping labor, and how employers must navigate legal guardrails, especially when the tech substitutes unionized human effort. Notably:

- AI-generated work isn't always just a technical upgrade – it could potentially lead to the reassignment of bargaining unit work.
- Using AI without bargaining may be seen as a "fait accompli"—a major no-no under NLRB precedent.
- Even with individual approval (or estate approval in the case of James Earl Jones), employers still must engage the union representing current performers.

## Not the First Challenge, and Not the Last



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## Resource Hubs

AI Governance Hub

This isn't the first time that the issue of using AI to replace human work has led to a union battle. We covered the Writers Guild of America (WGA) strike against Hollywood studios in 2023, a dispute centered on the increasing use of AI and the concern writers had that they would be replaced by GenAI tools such as ChatGPT. You can read our full coverage [here](#) and [here](#). And given the way that AI is being increasingly adopted in workplaces across the country, there's no doubt this won't be the last such challenge we see, especially if unions and workers believe that human jobs are being replaced by robots.

### **What's Next in the Darth Vader case?**

After a ULP charge is filed, the National Labor Relations Board's regional office (likely Region 21 in Los Angeles) will investigate the claim. This includes interviewing witnesses, reviewing documents, and determining whether there's enough evidence to issue a formal complaint.

If the NLRB finds merit to the charge and a settlement isn't reached, the case will proceed to a hearing before an administrative law judge. That process can take several months, and a decision could be appealed to the full Board in Washington, D.C., and even to federal court. In short: don't expect a final answer quickly.

But this case is worth monitoring because it could set the tone for future disputes over AI and union work – and could also set standards for how employers implement AI in their workplaces.

### **What Should Employers Do Now?**

Employers, both unionized and non-unionized alike, should use this dispute as a call to ensure they understand the legal ins and outs when it comes to the use of AI in the workplace.

#### **If You're a Unionized Employer**

- **Assess whether any AI implementation touches bargaining unit work.** Voiceovers, data input, drafting, design – if it was human before, a union will likely claim it's a mandatory subject of bargaining.
- **Review your CBA.** Look for management rights clauses, technology language, zipper clauses, and grievance procedures.

- **Avoid “past practice” defenses.** The NLRB has limited this line of argument in recent years, especially if practices were pre-union or discretionary.
- **If you want to adopt the most conservative approach, provide timely notice and bargain in good faith.** Don’t present AI adoption as a done deal.

### **If You’re Non-Union but AI-Curious**

- **Document your decision-making.** Ensure AI use is focused on business efficiency, not anti-worker motives.
- **Communicate transparently with staff.** While you may not have bargaining obligations, springing AI on employees could invite backlash or organizing efforts.
- **Beware of de facto labor violations.** If workers are replaced and complain, retaliation or chilling effects can trigger NLRA scrutiny – even without a union.
- **Anticipate potential regulation.** The [SAG-AFTRA video game strike](#) and other high-profile disputes are fueling legislative interest in AI labor standards at the state level. You can be sure that lawmakers and regulators in states like California and New York are paying attention to this dispute.
- **Introduce AI into the workplace in a way that minimizes disruption.** [You can read our playbook for handling this delicate balance here.](#)

### **Final Word: Don’t Let AI Pull You to the Dark Side**

AI Darth Vader may have made headlines, but it also raised legal alarms. Any employer exploring AI replacements should treat this case as a flashing red light. The law doesn’t forbid using AI in the workplace – but it should demand that you consider fair process and respect for workers’ rights. Whether you’re unionized or not, don’t let AI decisions be your undoing. In this galaxy, compliance is the best defense against the Empire. We recommend you implement our [10-step AI Governance plan](#) to put yourself in the best position to channel the Force.

#### **Want More on the Future of AI in the Workplace?**

Join us for our third-annual AI Conference in Washington, D.C. 23 to 25, where we’ll be unpacking this case and many other

edge compliance issues.

[Register here.](#)

## Conclusion

We will continue to monitor these developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips' Insight System](#). If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [AI, Data, and Analytics Practice Group](#) or our [Labor Relations Group](#).