



NY Hits Play While NLRB on Pause: Inside the State's New Labor Bill

Insights

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Recent uncertainty at the federal level involving labor relations disputes has prompted states to take action, particularly since the National Labor Relations Board (NLRB) currently has too many vacancies to issue decisions. Indeed, New York just became the latest state to pass a bill that could expand its authority to oversee labor disputes in the private sector – but it will almost certainly face legal challenges. We'll tell you everything you need to know about the bill and what it means for New York employers if it's ultimately signed into law.

What Does the Bill Say?

S8034A would grant New York State the authority to oversee labor disputes in private sector areas where it traditionally could not. Under the New York State Employment Relations Act (SERA), the state already asserts jurisdiction over private sector employers that are not covered by the National Labor Relations Act (NLRA) – such as small organizations in certain industries that don't meet monetary thresholds.

The new bill would expand the state's reach to employers that are covered by NLRA in times when the NLRB lacks a quorum or is otherwise unable to fulfill its duties. The intent is to fill in the gaps in labor governance created by federal inactions. So, the NY bill would extend state influence into areas traditionally reserved for the NLRB, which echoes recent efforts in other states to push boundaries and assert jurisdiction.

What is the Status of the NLRB?

Shortly after President Trump's second term began, the administration fired NLRB Member Gwynne Wilcox and General Counsel Jennifer Abruzzo as part of a broader effort to reorganize the agency. With Member Gwynne Wilcox gone, the five-seat Board was left with only two seats filled – and the Board must have a quorum of at least three members to conduct official business and issue decisions.

While the Board can still process unfair labor practice cases and union election petitions, it cannot issue decisions with only two members. This has left the Board in limbo, but you should recognize that even without a quorum, federal labor law remains in full effect and employers are expected to maintain compliance with the NLRA and all existing standards.

Notably, however, there are several NLRB actions currently on pause until a quorum is present, including:

- issuing appeals decisions;
- revoking and issuing new regulations; and
- enforcing or challenging subpoenas in court.

What Happens Next?

The NY bill now heads to Gov. Kathy Hochul's desk for review and signature. But even if it's signed into law, there's a good chance it will be challenged and could even be overturned based on well-established legal precedent:

- First, the bill seemingly runs into direct conflict with the 1957 Supreme Court decision in *Guss v. Utah Labor Relations Bd.*, which held that the Board has exclusive jurisdiction over issues assigned to it by Congress, even when the Board has not exercised that jurisdiction.
- Second, in the seminal 1959 decision of *San Diego Building Trades Council v. Garmon*, the Supreme Court also held that when an activity is "arguably subject to" the NLRA, both state and federal courts must defer to the exclusive authority of the NLRB. This means that even if the Board declines to act, states are prohibited from jumping in to regulate or award damages for conduct that could be covered by federal labor law. The intent behind the decision is to ensure a uniform national labor policy and prevent conflicting state and federal regulations in the labor relations field.

Proponents of the NY bill would look to the recent 4th Circuit decision in *National Association of Immigration Judges v. Owen*, making a parallel argument that state courts or agencies should be permitted to step in and assert jurisdiction over the relevant matters if administrative processes – such as those involving the NLRB – cease to function as intended.

Regardless of what happens with this bill, President Trump may soon nominate candidates to fill the NLRB's vacant seats, which would restore the Board's quorum. If this occurs, it could lead to jurisdictional conflicts between the NLRB and states that may seek to assert authority over labor disputes.

What Should New York Employers Do?

Here are three proactive steps to consider as we wait to see if the Gov. Hochul signs the NY bill into law:

1. Monitor Legislative Updates

Regularly check for official announcements and guidance from the New York State Department of Labor (NYSDOL) regarding the bill's status and any new requirements that may arise if it is signed into law.

2. Audit Labor Policies and Procedures

Ensure that internal policies on topics such as union recognition, collective bargaining, and dispute resolution are compliant with current state and federal law, so you can quickly adapt to changes.

3. Evaluate and Consider Updating Workplace Practices

Evaluate existing labor-management relationships, record and clarify all workplace policies and communications, and maintain consistency to ensure readiness for potential state oversight.

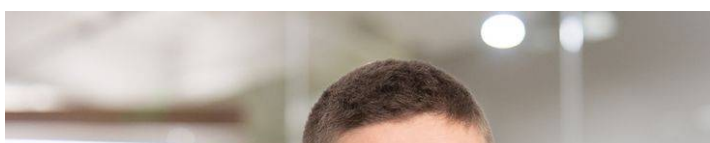
Conclusion

We will continue to monitor the New York bill, NLRB activity, and other agency decisions that will impact your day-to-day operations. We will provide updates as warranted, so be sure to sign up for [Fisher Phillips' Insight System](#) to receive updates directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York](#) office or [Labor Relations Practice Group](#).

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