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NEW YEAR, NEW LABOR BOARD: WHAT EMPLOYERS SHOULD EXPECT FROM THE NLRB IN 2026

Insights
Dec 19, 2025

As employers head off for the holiday season, Washington delivered a long-awaited gift: a newly reconstituted National Labor Relations Board. Late last night, the Senate confirmed two new NLRB Board members and Crystal Carey as NLRB General Counsel. Taken together, these confirmations signal a decisive pivot away from the most aggressive aspects of the Biden-era labor agenda and set the stage for a significantly different approach to handling cases and enforcement. What should employers expect from the Board in 2026?

How'd We Get Here?

It helps to rewind briefly. For most of 2025, the NLRB lacked a functioning quorum because it must have at least three members to issue decisions. The Board was left with just one member due to the January firing of Gwynne Wilcox, along with expired terms, political gridlock, and delayed confirmations. Effectively sidelined, the Board was unable to address or revise unfavorable precedent even as cases continued to pile up.

Instead, enforcement authority shifted heavily to the Office of the Acting General Counsel and the Board's 26 regions. Acting leadership pursued policy change through guidance memos, but many controversial Biden-era Board decisions persisted because there was no quorum to revisit them.

For employers that spent much of the past several years navigating whiplash-inducing changes in Board law, a

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Republican majority should now bring moderation and stability to federal labor law.

New General Counsel Brings Stability

A confirmed General Counsel brings stability and strategic direction to enforcement priorities, making Crystal Carey's confirmation particularly important. The GC's office decides which cases to prosecute, theories to advance, and precedents to challenge.

Even before her confirmation, acting leadership had already begun rescinding or narrowing a host of prior memos that expanded employer liability. Now that a confirmed GC is aligned with a more employer-friendly Board, the pace should accelerate to scale back Biden-era changes (more on that below).

Biden-Era Decisions Squarely in the Crosshairs

A newly seated Board majority will set the standards under federal labor law. Employers should expect the Board to begin the arduous process of revisiting a long list of recent decisions that dramatically expanded employee and union rights. These five categories stand out:

1. Union Organizing and Elections

Few decisions drew more attention than *Cemex Construction Materials Pacific, LLC*, which revived elements of the long-dormant *Joy Silk* doctrine. Under *Cemex*, an employer faces the prospect of a bargaining order if it declines to recognize a union claiming majority support and then committed even a single unfair labor practice.

That framework marked a sharp departure from decades of election-centric precedent and imposed extraordinary risk during organizing campaigns. A reconstituted Board is widely expected to narrow or overrule *Cemex* entirely.

Similarly, *American Steel Construction, Inc.*, reinstated the *Specialty Healthcare* "overwhelming community of interest" standard, making it easier for unions to carve out micro-units. That standard has long been criticized for fragmenting workforces and inflating organizing leverage. Employers should anticipate renewed scrutiny of this doctrine in 2026, and ideally a return to a more moderate standard.

2. Employer Speech and Campaign Conduct

Several 2024 decisions significantly constrained employer communications during organizing campaigns. In *Amazon.com Services, LLC*, the Board held that mandatory captive-audience meetings violate the National Labor Relations Act if attendance is compelled under threat of discipline. This decision overturned more than 75 years of contrary precedent. In *Siren Retail Corp. (Starbucks)*, the Board rejected a categorical rule permitting employers to warn employees about the loss of individualized grievance rights following unionization.

These decisions unsettled long-standing assumptions about lawful employer speech. A more employer-friendly Board is likely to recalibrate the balance, restoring clearer safe harbors for employer communications while policing genuinely coercive conduct.

3. Workplace Rules and Employee Conduct

The Biden-era Board also dramatically expanded Section 7 protections. *Stericycle, Inc.* made workplace rules presumptively unlawful if a "reasonable employee" could interpret them as limiting protected activity, shifting the burden heavily onto employers, and creating uncertainty. *Lion Elastomers* abandoned the uniform *Wright Line* framework for employee misconduct during protected activity, reinstating setting-specific standards that make discipline riskier in heated labor disputes where employees cross the line with threatening, racist, or misogynistic comments or actions.

Expect these standards to be revisited. Employers may see a return to more predictable, objective frameworks that recognize the need for consistent workplace rules and discipline, even when labor activity is involved.

4. Protected Activity and Remedies

Decisions such as *Miller Plastic Products* and *American Federation for Children* broadened the definition of protected concerted activity, sweeping in individual complaints and advocacy on behalf of non-employees. *Thryv, Inc.* expanded remedies to include "direct and foreseeable" financial harms, opening the door to consequential damages theories historically foreign to the NLRA.

While *Thryv, Inc.* has already been met with some hostility in a few Circuit Courts, these cases collectively expanded employer exposure far beyond traditional make-whole relief. A newly constituted Board is expected to rein in these remedial expansions and clarify the outer boundaries of Section 7 protection.

5. Severance Agreements and Contractual Waivers

Few decisions generated more immediate compliance headaches than *McLaren Macomb*, which called into question routine confidentiality and non-disparagement provisions in severance agreements. Likewise, *Endurance Environmental Solutions* reinstated the "clear and unmistakable waiver" standard, limiting employers' ability to rely on management rights clauses.

Employers should watch closely for Board action restoring greater contractual certainty, particularly in the severance and collective bargaining contexts.

What This Means for Employers in 2026

The new Board and General Counsel are likely to prioritize stability, clearer rules, and a rebalancing of employer and employee rights. It should be noted that significant doctrinal shifts have typically come about only with the agreement of at least three Board members, and that prospect remains unlikely until additional vacancies are filled. Consequently, significant change will only come at a deliberate pace on a case-by-case basis, not overnight, but the direction is unmistakable.

For employers, now is the time to take stock. Policies revised in response to recent Board law may warrant reassessment. Organizing-response strategies, handbook rules, severance templates, and bargaining approaches should all be reviewed with an eye toward what may soon be a more predictable legal landscape.

After several years of doctrinal turbulence, the NLRB may finally be offering employers something they have been asking for all along: fewer surprises and a clearer rulebook. As 2026 approaches, that may be the most welcome gift of all.

Conclusion

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