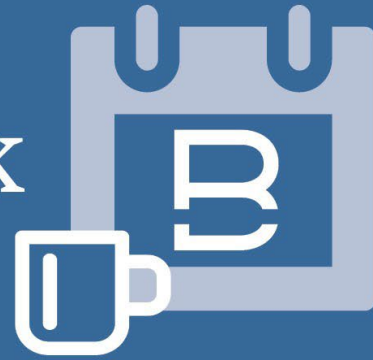


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Expect the NLRB to Steer in a Pro-Employer Direction

[Daniel R. Olson](#)

As President-elect Donald Trump prepares to return to the White House next week, employers are anticipating a sweeping change of policies from the National Labor Relations Board (“NLRB”). The NLRB is an independent federal agency with five board members that serves as an intermediary between labor unions and businesses by enforcing labor law under the National Labor Relations Act (“NLRA”). Additionally, courts often look to NLRB decisions and opinions for guidance in non-union matters as well.

In a narrow 49-50 vote last month, the United States Senate denied the re-nomination of sitting NLRB Chair Lauren McFerren. The Senate’s denial of McFerren paves the way for President-elect Trump to appoint a Republican to the NLRB, which will result in a Republican majority of NLRB members. Under President Joe Biden, the NLRB issued numerous pro-union decisions over the past four years, increasing workplace protections and expanding employee rights. This includes 26 opinions by the NLRB’s General Counsel Jennifer Abruzzo, who is widely expected to be removed from her position when Trump returns to office. Abruzzo’s anticipated removal follows President Biden’s removal of President-elect Trump’s sitting NLRB General Counsel four years ago, which was upheld by a federal court upon challenge. Abruzzo’s anticipated removal will also likely coincide with a new NLRB General Counsel rescinding all of Abruzzo’s 26 opinions. Many of Abruzzo’s opinions were pro-employee, [including her recent memorandum](#) opining that non-compete and “stay-or-pay” provisions violate the NLRA.

Under a Republican-majority NLRB, several pro-employee decisions from the Biden administration are expected to be overturned as well. Here are a few issues to keep an eye on:

- [Captive-Audience Meetings](#): In November 2024, the NLRB issued its decision in *Amazon.com Services LLC*, which held that “captive-audience” meetings—meetings in which employers express their views on unionization to employees—are presumptively unlawful under the NLRA. The *Amazon* decision will likely be overturned under the new administration.

- [Joint-Employer Rule](#): Under Biden’s tenure, the NLRB issued a rule expanding the analysis to determine whether employers are joint employers. A Republican-led NLRB may scale back this analysis to focus simply on whether an alleged joint employer has the authority to control an employee’s essential terms and conditions of employment.
- [Union Petitions](#): In 2023, the NLRB overturned longstanding precedent governing when an employer must recognize union efforts. Reinstating the prior rule would require a union to file a formal election petition before an employer has to recognize the union.
- [Anti-Union Retaliation Claims](#): The NLRB also lowered the evidentiary standard for demonstrating anti-union retaliation in 2023. The prior standard required a showing of a “particularized animus” to maintain a claim, which the NLRB lowered to a “motivating factor” standard. This lowered standard is also subject to change with the new administration.
- [Confidentiality Provisions](#): In *McLaren Macomb* and a corresponding opinion from Abruzzo, the Board also restricted employers’ ability to utilize confidentiality provisions in separation agreements. Specifically, the Board determined that preventing employees from disclosing the terms of their separation to anyone other than their spouse or professional advisor was too restrictive. The Board may reverse *McLaren* on this issue as well.

At Bassford Remele, our [Employment Law practice group](#) regularly monitors case law, legislation, and administrative decisions. We’ll continue to monitor the newly constituted NLRB and provide updates in future editions of *The Work Week*. In the meantime, please feel free to reach out to any of our team members for guidance, questions, or further assistance. We would love to hear from you!

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