

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

JULY 22, 2025

### New York State Attempts to Step in While National Labor Relations Boards Steps Back

Does the saying “when the cat is away, the mice will play” apply to labor law? Some states, including New York, seem to think so. With the National Labor Relations Board (“NLRB” or the “Board”) currently lacking a quorum, New York and other pro-labor states are exploring ways to fill the regulatory gap left by a temporarily dormant federal agency. Some states view the lack of quorum as a threat to workers’ rights. Legislatures in those states have passed laws to allow state labor boards to fill in for the NLRB when it lacks a quorum or otherwise declines to exert jurisdiction.

#### Why the NLRB Is Inactive

The NLRB normally consists of five members and requires at least three to form a quorum—the minimum needed to issue decisions, make rules or take other major actions. In Jan. 2025, shortly after the new administration came into office, President Trump removed NLRB Member Gwynne Wilcox, leaving the Board with only two members. Wilcox challenged the removal but the Supreme Court reversed a lower federal court ruling temporarily reinstating her to the Board.

Absent a quorum, NLRB functions are significantly curtailed. Principally, the Board cannot issue decisions, certify elections, promulgate regulations or act in a manner that would otherwise require Board approval. While the National Labor Relations Act (“NLRA”) allows remaining members and NLRB staff to handle limited matters such as processing unfair labor practice charges through regional offices, the Board itself cannot issue decisions or change regulations without at least three members.

#### The NLRA Generally Preempts State Laws Aimed at Regulating Labor Disputes

Under the Supreme Court’s longstanding precedent in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), the NLRA generally preempts state and local laws that attempt to regulate private sector labor relations. That means where there is even the potential for conflict between the NLRA and state or local law, then such state/local law is preempted.

Section 14(c)(2) of the NLRA does permit limited state involvement when the NLRB has expressly declined jurisdiction by rule or decision. However, the NLRA does *not* address state authority when the NLRB is unable to act due to a lack of quorum. As a result, states are largely left without authority over private sector labor disputes, aside from specific exceptions like agriculture or public employment.

#### New York’s Proposed Law: Senate Bill S8034A

Against this backdrop, the New York State Legislature passed Senate Bill S8034A (the “Bill”), legislation that would allow the state to step in where the NLRB cannot act and represents an attempt to take control over labor relations in the event of a quorum-less Board.

The legislation amends Section 715 of the New York Labor Law to provide coverage for private employees that are normally covered by the NLRA. The Bill, if signed by the Governor, would give authority to New York’s Public Employment Relations Board (“PERB”) to oversee labor disputes in the private sector in the event that the NLRB cannot “successfully assert jurisdiction” – in cases such as where the Board lacks a quorum. This would enable the PERB to

certify elections and to exercise authority over any previously negotiated collective bargaining agreements.

PERB already has the authority to assert control over certain private sector employers such as small employers that do not meet federal commerce thresholds and thus fall outside of the jurisdiction of the NLRA. But this Bill would significantly expand PERB's role, allowing it to fill the void left by a nonfunctioning NLRB across a much broader swath of the private sector.

### **New York's Moves to Support Labor**

This Bill is not a new attempt by New York to regulate in the labor space as the state recently and aggressively sought to expand state power over labor relations. For example, in 2019, New York passed a law known as the Farm Laborers Fair Labor Practices Act (FLFLPA), which covers all farm laborers across the state. The FLFLPA extended coverage of New York's State Employment Relations Act to agricultural laborers and added certain unique provisions. Specifically, the FLFLPA permits farm workers to organize via a "card check" agreement as an alternative to elections and gives mediators power to impose contracts on unions and employers when they do not reach agreement quickly.

Industry groups and workers have recently challenged those actions as unconstitutional and some of those challenges remain pending.<sup>1</sup>

### **Conclusion**

While Governor Hochul has yet to sign or consider the Bill, New York employers should be aware of increased statewide activity in spaces normally reserved for federal agencies during a period of decreased federal oversight. With respect to the NLRB specifically, New York's Bill may also be a dead letter upon arrival as President Trump recently nominated two new members to the Board, Scott Mayer (chief labor counsel at Boeing Co.) and James Murphy (former NLRB attorney). If approved by the Senate, they would increase the Board membership to four (4) and establish the quorum necessary for it to act.

With respect to the NLRB specifically, employers should also be aware that even though the Board currently lacks a quorum, its operations remain as active as possible. To that end, regional offices are still processing and investigating unfair labor practice allegations, issuing complaints to the maximum extent permitted by law and conducting administrative law judge hearings on complaints. Moreover, the Board's precedents and regulations – including many union friendly rulings issued by the Board under the Biden Administration – remain in effect, meaning employers are still subject to those standards and precedents. Employers who run afoul of established federal labor law could face liability down the road if charges commenced against them now – when the Board lacks a quorum – nevertheless reach the Board in the future when it has reestablished a quorum. Employers should continue to maintain compliance with current Board law.

If you have any questions or would like additional information, please contact [Samuel Dobre](#), [Samuel Wiles](#), [Jason Kaufman](#) or the Bond attorney with whom you are regularly in contact.

---

<sup>1</sup> <https://www.nrtw.org/news/ca-ny-farmworkers-ufw-05272025/>

