

The Labor Law Pendulum: Anticipated Changes for the Hotel Industry

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Key Take: *All employers, not just those with unions representing their employees, should be aware of the labor law changes anticipated by the Trump 2.1 NLRB.*

It is a common misconception that labor law and the National Labor Relations Board (NLRB) only apply to employers if their employees are represented by a union. In fact, the NLRB covers almost all U.S. employers. Therefore, it is important to understand that the NLRB is one of the most politically sensitive federal government agencies. That is the case because the president has the authority to appoint a majority of the NLRB's five members, as well as the NLRB's General Counsel (G.C.). Historically, Democratic presidential appointments have favored unions and employees, and Republican presidential appointments have favored employers. Commencing in 2025, it is expected that pendulum of NLRB decisions will swing back to favoring employers after four years of decisions favoring unions and employees. This article will summarize some of the

possible pendulum swings that may affect the hotel and hospitality industry.

Assuming that President Trump fires G.C. Jennifer Abruzzo promptly upon inauguration, it is reasonable to anticipate that a new G.C., who is favorable to employers, will rescind several G.C. Memoranda issued during the prior four years. Although G.C. Memoranda are not legal precedent like NLRB decisions, they do instruct NLRB Regional Offices on the types of cases that should be filed to support the G.C.'s enforcement priorities. The following is a list of G.C. Memoranda that are likely to be rescinded:

- Expansion of remedies in unfair labor practice (ULP) cases to include “consequential damages,” in addition to reinstatement and back pay
- Prohibition of confidentiality and non-disparagement clauses in severance agreements
- Limitation of non-competition (“stay or pay”) clauses in agreements
- Limitation of electronic monitoring of employees
- Classification of college athletes and graduate assistants as employees who can form a union

More impactful changes in the direction of the NLRB pendulum are likely to be caused by the reversal of several NLRB decisions and rules favoring unions and employees issued during the prior four years. The pendulum may swing back in favor of union-free hotel and hospitality industry employers if the following NLRB rules and decisions relating to union organizing and election campaigns are reversed:

- Quickie Elections: Shortened time frames for employers to campaign during a union election, and strict filing obligations imposed on employers after a union petition for election is filed.
- Micro Units: Allowing a union to establish the initial group of employees who are eligible to vote in a union election, possibly a much smaller

group of employees than the employer may desire.

- *Cemex Construction Materials*: When a union demands that an employer voluntarily recognize it, the employer commits a ULP if it does not either do so or file a NLRB Petition For Election.
- *Siren Retail Corp. d/b/s Starbucks*: An employer cannot make election comments stating that unionization will interfere with employees' relationship with management.
- *com Services*: An employer cannot conduct a captive audience (mandatory attendance) meeting during a union election campaign.

As stated above, labor law and the NLRB are applicable to all employers, whether or not any of their employees are represented by a union. If the following NLRB decisions were reversed, all hotel and hospitality industry employers would benefit:

- *Thryv*: "Consequential damages" required to remedy ULP in addition to reinstatement and back pay
- *McLaren Macomb*: ULP for an employer to include broad confidentiality and non-disparagement clauses in severance agreements
- *Stericycle*: Facially neutral handbook provisions and rules may be ULP
- *Lion Elastomers*: Protections for employees who engage in abusive conduct including swearing

Hotel and hospitality industry employees would be well advised to monitor the NLRB pendulum, as it is likely to swing toward being more employer favorable in the next few years.