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Quorum Countdown: NLRB Awaits Senate Confirmation to Get Moving Again

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By [Ryan Krone](#), [Amy Moor Gaylord](#), and [Thomas Y. Mandler](#)



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It has been seven months since the National Labor Relations Board (NLRB or Board) has had the three-member quorum needed to issue decisions. The last decisions issued by the Board were from a brief period in March 2025 when Board Member Wilcox was temporarily reinstated. The lack of published opinions over the past seven months has been unprecedented — there have been only a handful of months in the agency’s 90-year history without a single published opinion.

With the Senate expected to vote soon on NLRB nominee James Murphy, and possibly thereafter on

NLRB nominee Scott Mayer, the Board may have the minimum number of members needed to issue decisions again. Once that happens, they will move quickly to start clearing out the backlog, and we expect to see a surge in published cases, potentially many in the first few weeks.

However, even though the Board will once again be able to issue decisions, tradition dictates three votes are needed to overturn precedent, so it may be some time before case law is overturned. When that finally does happen, there are several prior NLRB decisions employers would like reversed or at least limited in order to clarify the National Labor Relation Act's application, especially to non-union employees. Included among those decisions are: (1) *Stericycle, Inc.*, 372 NLRB No. 113 (2023), which held that facially neutral employment rules or policies (social media, negative conduct by employees, and maintaining confidentiality) are presumptively invalid if a reasonable employee could interpret them as interfering with employees' rights; (2) *McLaren Macomb*, 372 NLRB No. 58 (2023), which held that broadly worded confidentiality and non-disparagement clauses in separation agreements were violations of employees' rights; and (3) *Lion Elastomers, LLC II*, 372 NLRB No. 25 (2024), which limited an employer's ability to discipline employees for verbally abusive conduct related to working conditions, even if that conduct potentially violates anti-discrimination law.

The National Labor Relations Board is set to start issuing decisions as soon as the Senate confirms a pair of nominees who would give the board the minimum number needed to resolve cases, according to former Republican NLRB Chair Marvin Kaplan.

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