Client Alert: NLRB Expands Unfair Labor Practice Penalties in All Workplaces

BY DAVID M. FELPER AND CHELSIE A. VOKES • DECEMBER 15, 2022

On December 13, 2022, the National Labor Relations Board (NLRB) issued a 3-2 decision significantly increasing the potential penalties for unfair labor practices prohibited by the National Labor Relations Act (NLRA). In its decision, the NLRB found for the first time that employers who violate the NLRA must now pay damages for "direct or foreseeable pecuniary harms that result from a respondent's unfair labor practice." This new category of remedies, commonly known as "consequential damages," expands upon existing remedies like back pay and reinstatement. The NLRB noted that damages falling under this category include, for example, "out-of-pocket medical expenses, credit card debt, or other costs simply in order to make ends meet."

The dissenting NLRB board members highlighted the potential impact of this decision. Namely, they argued that the availability of consequential damages could open the door to invasive inquiries into speculative harms and lengthen compliance proceedings.

Employers should note that this decision does not solely impact unionized workplaces. While the NLRA primarily applies to union employees, certain NLRA provisions protect nonunion employees as well. For example, Section 7 of the NLRA gives nonsupervisory union and nonunion employees the right to collectively act to improve wages and other terms and conditions of employment. All employers should be aware of their obligations under the NLRA.

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