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Unions Gaining New Power From National Labor Relations Board's New Activism

2011 Fiscal Year-end report of the National Labor Relations Board (Board) highlights the advisability for employers to tighten their labor-management relations compliance and defenses in response to the growing regulatory and enforcement activism of the Board on behalf of labor under the Obama Administration.

President Obama made no secret of his strong support and intention to pursue an aggressive pro-union legislative and enforcement agenda and to take other actions to support unions. While Administration efforts to enact the Employee Free Choice Act or other pro-union legislation have met with limited success in Congress, federal enforcement law data shows the Obama Administration is achieving significant success in promoting its pro-union agenda through regulation and enforcement.

The 2011 Fiscal Year-end numbers show the number of cases handled by the Board rose 17% in 2011. During the 2011 Fiscal Year that began October 1, 2010, the Board:

- ✓ Handled 272 unfair labor practice cases and 96 representation cases;
- ✓ Issued 368 decisions in contested cases; and
- ✓ Pursued two pro-labor rulemaking initiatives.

In cases like its highly publicized challenge to the planned relocation by Boeing of jobs to another state, the Board regularly has lent its support to labor efforts to oppose or challenge management authority. In the course of handling these cases, the Board also reached out to strengthen the power and protections of labor by addressing issues such as the access rights of pro-union employees to employer property, the rights of undocumented immigrant workers to backpay remedies, the protection of new collective bargaining relationships from challenge and other issues favorable to union organization and rights.

Along side its high disposition of cases, the Board also has released and sought public comment on two new rules favorable to labor:

- ✓ A new final rule that will require that employers post a notice of employee rights under the National Labor Relations Act ("Posting Rule") scheduled to take effect on January 31, 2012; and
- ✓ Proposed rules that would change pre- and post-election representation case procedures, which the Board has not finalized at this time.

The progress of the Board in using its regulatory and enforcement powers to promote a pro-labor agenda is helping union organizing and bargaining efforts. In light of this new activism, employers should review their existing policies to ensure that they comply with evolving federal rules regarding the rights of labor and to otherwise act to defend against potential labor related risks keeping in mind emerging decisions that extend certain historical labor rights to unionized employees, employees engaged in protected organizing activities and, under recent decisions, in some instances even employees in non-union environments requesting representation in disciplinary or other circumstances not historically understood by employers to fall within the provision of the National Labor Relations Act.

For Help or More Information

If you need help reviewing and updating your employee benefit plan investment advice arrangements or with other employee benefits, human resources or related matters, please contact the author of this update, Cynthia Marcotte Stamer.

Recently selected for induction as a Fellow in the American College of Employee Benefit Council and for extensive work and accomplishments in the employee benefits area, immediate past Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Group and current Co-Chair of its Welfare Benefit Committee, Vice-Chair of the ABA TIPS Employee Benefits Committee, a council member of the ABA Joint Committee on Employee Benefits, and past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer is recognized, internationally, nationally and locally for her more than 24 years of work, advocacy, education and publications on employee benefit, human resources and related workforce, insurance and financial services, and health care matters.

A board certified labor and employment attorney widely known for her extensive and creative knowledge and experienced with these and other employment, employee benefit and compensation matters, Ms. Stamer continuously advises and assists employers, employee benefit plans, their sponsoring employers, fiduciaries, insurers, administrators, service providers, insurers and others to monitor and respond to evolving legal and operational requirements and to design, administer, document and defend medical and other welfare benefit, qualified and non-qualified deferred compensation and retirement, severance and other employee benefit, compensation, and human resources, management and other programs and practices tailored to the client's human resources, employee benefits or other management goals. A primary drafter of the Bolivian Social Security pension privatization law, Ms. Stamer also works extensively with management, service provider and other clients to monitor legislative and regulatory developments and to deal with Congressional and state legislators, regulators, and enforcement officials concerning regulatory, investigatory or enforcement concerns.

Recognized in Who's Who In American Professionals and both an American Bar Association (ABA) and a State Bar of Texas Fellow, Ms. Stamer serves on the Editorial Advisory Board of Employee Benefits News, the editor and publisher of [Solutions Law Press HR & Benefits Update](#) and other Solutions Law Press Publications, and active in a multitude of other employee benefits, human resources and other professional and civic organizations. She also is a widely published author and highly regarded speaker on these matters. Her insights on these and other matters appear in the Bureau of National Affairs, Spencer Publications, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, Modern and many other national and local publications. You can learn more about Ms. Stamer and her experience, review some of her other training, speaking, publications and other resources, and register to receive future updates about developments on these and other concerns from Ms. Stamer [here](#).

Other Resources

If you found this update of interest, you also may be interested in reviewing some of the other updates and publications authored by Ms. Stamer available including:

- [Employers Considering Using New IRS Voluntary Worker Classification Settlement Program To Resolve Payroll Tax Risks Must Also Manage Other Legal Exposures](#)
- [Participant Notification Added To Required Procedures For Church Plan Determination Letter Requests](#)
- [HHS Credits Affordable Care Act Adult Dependent Child Coverage Rule With Getting 1 Million Young Adults Health Coverage](#)
- [2010 Webcast Series on Federal Employer Employment of Persons With Disabilities Planned](#)

- **EBSA Plans To Include Health Care Reform Compliance In Health Plan Audits Beginning In FY 2012; Disputes OIG Criticism Of ACA Enforcement Efforts**
- **New Labor Department Video Tries To Educate Young Workers About Benefits & Benefit Rights**
- **Employer Assistance and Resource Network Offers Free Webinars For Employers During October In Honor of Disability Employment Awareness Month on Thursdays in October from 2:00 – 2:30 p.m. Eastern Time. Topics will include Employer Preparedness to Include Veterans with Disabilities**
- **HHS Projects Medicare Advantage Enrollment Will Rise As Premiums Decline In 2012; Plans Face Increased Regulation & Enforcement**
- **HHS Credits Health Reform For Getting Health Coverage For Added 1 Million Young Adults**
- **4th Circuit Rejects Two Challenges To Affordable Care Act Constitutionality**
- **Stamer Named Fellow In American College of Employee Benefits Counsel**
- **ABA TIPS Section Appoints Cynthia Marcotte Stamer Vice Chair of Employee Benefits General Committee**
- **Affordable Care Act To Require Health Plans Cover Contraception & Other Women's Health Procedures In 2012**
- **Company Executives, Plan Sponsors & Others May Face Personal Liability When Others Defraud Plans or Mismanage Employee Benefit Plan Responsibilities**
- **EEOC Finalizes Updates To Disability Regulations In Response to ADA Amendments Act: Employers Should Manage Risks**
- **Employer Charged With Misclassifying & Underpaying Workers To Pay \$754,578 FLSA Back pay Settlement**
- **HHS Imposes 1st HIPAA Privacy Civil Penalty of \$4.3 Million**
- **NLRB Settlement Shows Care Necessary When Employers Use Social Networking & Other Policies Restricting Employee Communications**
- **Wage & Hour Law Settlements Highlight Rising Wage & Hour Risks of U.S. Employers**
- **OCR Requires Rhode Island DHS To Provide Translation, Other Services For Limited English, Other Language Impaired Accommodations.**

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