



Webinar 21 – November 12, 2025

NLRA/NLRB Updates

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- What is the NLRA/NLRB

RECENT NLRB UPDATES AND RULINGS

WHAT'S AHEAD

HRtelligence TIPS

INTRO/SETTING THE STAGE

Overview: What is the NLRA/NLRB?

NLRB

Established in 1935, the National Labor Relations Board is an independent federal agency that protects employees from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.

- Enforces provisions of the National Labor Relations Act of 1935 (“NLRA”), 29 U.S.C. sections 151-169.
- This federal law prohibits covered employers from engaging in unfair labor practices, which is generally conduct that restrains, coerces, or interferes with employees exercising their workplace rights.

NLRA

- The National Labor Relations Act (“NLRA”) protects the rights of both union and non-union employees to engage in “concerted activities” for purposes of “mutual aid and protection,” such as improving the terms and conditions of employment.
- The NLRA also guarantees unions the right to collective bargaining, the right to strike, and makes it illegal for any employer to deny union rights to an employee.

The NLRA can apply to union and non-union workplaces. It is a common misconception that the NLRA only applies to unionized workplaces. Employees covered by the National Labor Relations Act are afforded certain rights to join together to improve their wages and working conditions, with or without a union.

Union Activity

Employees have the right to attempt to form a union where none currently exists, or to decertify a union that has lost the support of employees.

Examples of employee rights include:

- Forming, or attempting to form, a union in your workplace;
- Joining a union whether the union is recognized by your employer or not;
- Assisting a union in organizing your fellow employees;
- Refusing to do any or all of these things;

- To be fairly represented by a union.

Non-Union Activity

Employees who are not represented by a union also have rights under the NLRA.

Specifically, the National Labor Relations Board protects the rights of employees to engage in “concerted activity”, which is when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment.

A single employee may also engage in protected concerted activity if they are acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action.

A few examples of protected concerted activities are:

- Two or more employees addressing their employer about improving their pay.
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other or with a supervisor.
- An employee speaking to an employer or supervisor on behalf of one or more co-workers about improving workplace conditions.

Examples of Unprotected Activity

- Personal griping or complaining
- Malicious behavior
- Violence
- Spreading lies deliberately

Who is covered?

Most employees in the private sector are covered by the NLRA. However, the Act specifically excludes individuals who are:

- employed by Federal, state, or local government
- employed as agricultural laborers
- employed in the domestic service of any person or family in a home
- employed by a parent or spouse
- employed as an independent contractor
- employed as a supervisor (supervisors who have been discriminated against for refusing to violate the NLRA may be covered)
- employed by an employer subject to the Railway Labor Act, such as railroads and airlines
- employed by any other person who is not an employer as defined in the NLRA

RECENT NLRB UPDATES AND RULINGS

NLRB Lack of Quorum

- The NLRB has been without a quorum since January 2025 because of vacant seats. Chairman Marvin Kaplan's term ended in August 2025, leaving the Board with only one member.
- The board requires a minimum of three members for a quorum to act lawfully, and a lack of a quorum has been a persistent issue for the board. As a result, the NLRB has not been able to issue new ruling.
- With the Senate HELP Committee advancing two of President Trump's nominees, the NLRB may soon regain a quorum and shift to its first Republican-led majority since 2021 – potentially signaling changes to existing federal labor law.

New York Authorizes PERB to Regulate Labor Disputes

- In September 2025, New York passed a law to allow the state's Public Employment Relations Board ("PERB") to regulate private-sector labor disputes when the NLRB does not have a quorum.
- The NLRB filed a lawsuit against New York to block the law arguing it is preempted by the NLRA.

Effects of the Government Shutdown

Due to the government shutdown many worker protection agencies have ceased the enforcement of the nation's labor laws. The NLRB has ceased almost all case handling, including conducting routine union elections and investigating unfair labor practice charges.

Processing of representation petitions and unfair labor practice charges are paused; postponement of conducting representation elections. Pending administrative litigation and investigations are also on hold until the government reopens.

The NLRB's regional offices continue to operate, investigating various charges in cases, holding hearings and brokering settlements. But cases requiring final rulings pile up in Washington. And, in the meantime, that might change negotiating strategies in some situations.

Expanded Remedies Under *Thryv* Remain in Force

The NLRB's *Thryv, Inc.* decision (2022) broadened employer liability in unfair labor practice cases by requiring compensation for all "direct or foreseeable" harms.

Courts Split on the NLRB's Authority

Federal appellate courts have issued conflicting rulings on the NLRB's power to award these expanded damages – creating uncertainty until the NLRB or the Supreme Court provides further clarity.

Employers Should Prepare for Policy Shifts

A Republican-led majority on the NLRB could narrow *Thryv* remedies and reexamine key doctrines affecting joint-employer standards, independent-contractor classifications, and union election rules. Employers should monitor developments closely and seek counsel on pending or potential labor disputes.

WHAT'S AHEAD

The agency's FY 2022–2026 Strategic Plan (with the FY 2026–2030 plan under review for rollout in the FY 2027 cycle) emphasizes four primary goals: (1) effective enforcement of the NLRA, (2) protection of employee free choice in representation matters, (3) organizational excellence, and (4) efficient resource management to instill public trust.

Budget Overview and Staffing

The FY 2026 budget request is allocated as follows:

- **Labor (Salaries and Benefits):** \$231 million (81.1%)
- **Information Technology, Security, and Facilities:** \$23 million (7.9%)
- **Rent:** \$21 million (7.5%)
- **Other Operational Costs:** \$10 million (3.5%)

The agency anticipates a reduction of 99 full-time equivalents ("FTEs"), bringing total staffing to 1,152 FTEs. This decrease is driven by voluntary early retirements and deferred resignations, as part of broader efforts to address staffing imbalances and improve operational efficiency.

Information Technology and Cybersecurity Initiatives

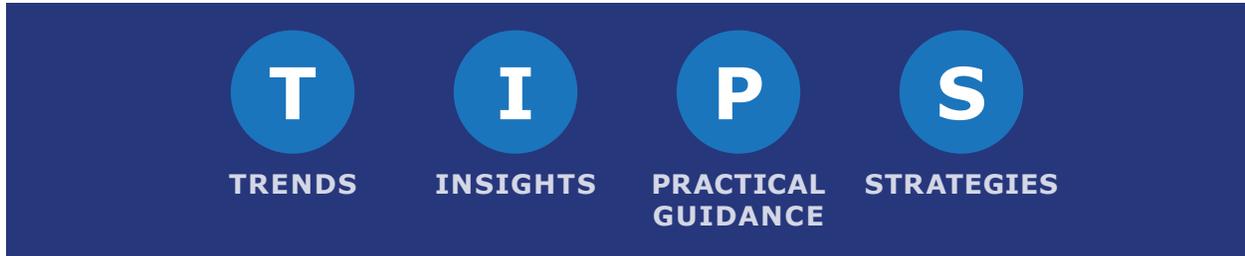
A central focus of the FY 2026 budget is the modernization of the NLRB's IT infrastructure. The agency is replacing its Case Management System, supported by a \$23.2 million investment from the Technology Modernization Fund ("TMF").

The NLRB is also integrating Artificial Intelligence ("AI") to automate routine tasks, enhance data analysis, and improve case-processing efficiency, in line with recent executive orders on government efficiency and responsible AI use.

Cybersecurity remains a top priority. The agency is participating in the Department of Justice's Zero Trust Architecture pilot and is implementing advanced monitoring, data loss prevention, and compliance with federal cybersecurity mandates.

Audit and Oversight

The budget report identifies several open audit recommendations, including improvements to data accuracy in case management, performance-based staffing methodologies, internal controls for mail ballot elections, and enhanced cybersecurity training.



Employers can expect the NLRB to likely shift to a more employer-friendly stance in 2026, potentially reversing some recent precedents and altering union organizing rules.

Employers should also prepare for potential state-level legislation on a variety of labor issues as a counterbalance to anticipated federal changes.

- The NLRB has played a significant role in shaping the landscape of labor relations, particularly with its decisions that extend beyond the traditional boundaries of unionized workplaces. Non-union employers are finding themselves increasingly affected by these rulings, and non-union employers should stay informed about NLRB rulings and proactively adjust their policies and practices to align with such decisions.
- Non-union employers should pay close attention to and follow Board decisions affecting their workforces. Adhering to recent rulings will protect employers from policies, practices, and decisions that potentially violate the NLRA.