

MFG Week Webinar Series Transcripts

Labor Law Under The Trump Administration

00:00:06:22 - 00:00:51:00

Speaker 1

Good morning. Good afternoon. Wherever you are. We appreciate you joining here. Joining us here, at, the first day of manufacturing week 2025 of Frost Brown. Todd. My name is Steve Witty. I head up, the industrial sub team of our manufacturing industry team here at Frost Brown. Todd. Just as a bit of background on manufacturing industry team is a basically a collection of lawyers from practice groups across, across our practice groups and, across the country, that are focused on, applying their legal expertise to the manufacturing industry.

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Speaker 1

We have three focuses mobility, which is, automotive and things that move consumables, which are could range from alcoholic beverages to pharmaceuticals. And finally the industrials, which includes things like, large farm equipment, electronics and a wide range of things that basically don't fit in the other two. But nonetheless, we have found that it's, a great way to, help clients and, this manufacturing industry team the model, by being able to provide, what we have learned as lawyers and what we understand and learn about your industries.

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Speaker 1

So, again, thank you very much for coming. This is the first day of the of the five. Webinars we have this week. We hope that you have, signed up for other ones, because we think they're all going to be great. Tomorrow will be, a presentation on, pass and California's, environmental reporting requirements.

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Speaker 1

Wednesday, we are doing, a, crisis management, presentation. Thursday is all about data security and privacy and the application of that to various, real world situations that manufacturers might find themselves. And finally, on Friday, we end up the week, with, navigating private equity and manufacturing, using it as, a succession planning or, other ways you can utilize, key things to think about things that we are thinking about when they look at manufacturers.

00:02:46:17 - 00:03:21:09

Speaker 1

A great week overall. But we start today with, labor and employment and the Trump administration. The presenters today are two fantastic lawyers. Kat Burgett is here in the Columbus office with me, and Mekeisha Montgomery, who is the chair of our firm's labor and employment practice group, sits in our Nashville office. And they're going to give you a, a great presentation on, you know, how things have changed since January and the labor and employment world, you will see at the bottom of your screen a Q and a tab.

00:03:21:09 - 00:03:39:22

Speaker 1

If you have questions, feel free to drop a question in there and Cat and Mickey Show will be able to address those, at the end. Again, I really appreciate you taking the time, to join us. And I will hand it over to Mekeisha and Kat. Take care.

00:03:39:24 - 00:03:59:07

Speaker 2

Thank you. Steve. Hello, everybody. We're so glad that you're joining us today. We don't know how you can talk about manufacturing and not talk about unions or the threat of unions. So we were happy to jump on and talk about those today and the wild, wild West that has been the National Labor Relations Board and labor work in general since the Trump administration.

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Speaker 2

We're going to talk, really quickly about the changes that have been going on at the National Labor Relations Board. Just really quickly, before we get into that, give you a quick history of how the board works. The National Labor Relations Board has five seats, and that board is the one that, administers the National Labor Relations Act.

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Speaker 2

And a lot of things that go on with unionized employers, are folks who are dealing with unions wanting to make them a unionized employer. The five states, the board, is on one hand and on the other hand, we have the general counsel, he does the policy guidance and all that good stuff. The five seats on the board there, two are reserved for Republican Party, two reserved for the Democratic Party.

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Speaker 2

And then the last seat is reserved for whoever is in power at the time. So it's switches back and forth depending on which administration we have, where we have a majority that's, either Republican or Democrat, depending on who is appointing that this seat. Except right now we don't even have that because we are in quite the state of chaos at the board level right now.

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Speaker 2

So some recent changes that we so want to quick the other recent changes we've had, the general counsel, Jennifer Brouseau, was discharged when Trump came into the administration. That is not unusual because, President Biden, when he came in, also terminated the general counsel of the National Labor Relations Board. That was a change in precedent.

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Speaker 2

For years, they had avoided, the general counsel's term check to expire before they appoint a new counsel. But we were in the new world order where you get fired. The first day of the administration. Pretty much. I think

it took him a few days longer, but she was out fairly quickly. Right now, William Cohen is the acting general counsel who was appointed by Trump.

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Speaker 2

What was a little bit different about the board this time was that we actually had a sitting member, Quinn Wilcox. He was removed by President Trump. It is the first time that that has happened since, the board has existed. And, that is currently, as you can imagine, and quite a bit of litigation over whether or not, the Trump administration had the power and authority to make that decision.

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Speaker 2

So she originally when she, the lawsuit started, was reinstated, but then, so we had a quorum for about five minutes, and they did during that short period, after a few, decisions, but only a handful, and then an appeals court, halted that, and said that, Wilcox, was going to continue to sit out until the litigation hit, finally get result gotten resolved.

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Speaker 2

So that removed her, from the board. And it also took us down to just two members of the board, which means we could not have any decisions coming out of the board because we have to have three, or a quorum out of the five, folks that are sitting in order to have decisions. And then this, I believe it was in August of this year.

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Speaker 2

Marvin Kaplan his term ended. And that took us to one single member on the board, which means that we have no quorum or any ability for any decisions to come out of the board. So it is essentially sitting there, with not anything going on other than a bunch of litigation around removal of Wilcox. Now, we have had some nominations to the board.

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Speaker 2

Trump recently nominated Scott Mayor and James Murphy to fill the two open Republican board seats. If they had been confirmed, it would allow the board to again go back to, where we have a quorum. We would have capital in place. I'm sorry. The sitting proudly plus, Mayor and Murphy in there. However, it it it's a Senate confirmation process that we go through for those folks.

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Speaker 2

It would be lovely to have that. We do. We're sitting right now with, most of the Biden era, rules intact, which are not, generally, employer friendly. So one of the things that I think a lot of employers would like to see it get redone once we're able to do that. One of the, two nominees was Scott Mayor.

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Speaker 2

He was chief labor counsel for Boeing. He would have filled the seat that was held by former member McFerran. He was a Democratic appointee, and his term expired at the end of 2024. Mayor, if he had been, had gone through the Senate confirmation process for his term, would have expired in 2000. At the end of 2029, however, after a lot of grilling, by the Senate, they ended up, not moving forward with his nomination.

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Speaker 2

So it's on hold, and I believe he will probably withdraw. James Murphy has been a career attorney at the board. He, was the other nominee and would fill the vacancy that was held by former member ring. His term would expire in December of 2027. He did pass through the Senate committee, on October 9th, and now he'll move to the full Senate vote.

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Speaker 2

So at least we have one person waiting in the wings, to bring our total up to a grand total of two until we get further, direction from either the appeals or further nominations. The other change is Crystal Carey. Was also nominated to become the general counsel to replace the interim. She, also got quite a bit of drilling, from, the committee, but did pass on October 9th.

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Speaker 2

She's a former staff attorney with the board. After joining, Morgan and Lewis in 2018, she's now coming back, to the board as general counsel.

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Speaker 2

So we've had a year, almost the entire year now without, a quorum, which means that we have very limited decision making by the board. We are seeing a pretty steady case backlog now, and obviously delays as we're waiting for decisions from the board that cannot be made, for at least some time. Further, that's also impacted rulemaking and enforcement because, as we continue to wait for those positions to be filled, and we also are just now getting, a full time general counsel, person in place, hopefully after the full Senate, confirmation.

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Speaker 2

And so without, either of those, in place, we've just have a lot of nothing going on, while we wait for it. And we expect to there to be current, quite a bit of challenges from both employers and the union side, even once we do reach full quorum. So don't get in a hurry with the board right now.

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Speaker 2

And if that all wasn't enough, we now have the government shutdown which is impacting the board as well. What it does from a practical standpoint, for those of you who have, unions and you've got, UPS pending all those good things, it all the deadlines are told as, as, as they're permitted to be by law.

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Speaker 2

And so deadlines are just going to sit there until we, have the government shut down. Pass us, fair labor practice hearings are going to be postponed for now. Same for all election hearings. Those are going to be postponed until after the shutdown has ceased. If there's a complete lapse of funding, which I think they have just enough, probably make it for a few more days here and then they'll have a complete lapse.

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Speaker 2

There'll be a posting in each office that there is a complete shutdown, and they won't even run any sort of services whatsoever. So we wait to see what happens. There.

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Speaker 2

Eventually we are hopeful that, we will get a quorum. It is in, the Trump administration's, you know, best interest in what they are attempting to do is to get to a quorum sooner rather than later. But obviously that's getting impacted by the shutdown and the continued challenge by the Senate when they have, folks before them.

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Speaker 2

So we'll see if we they can get things moving along. But even if we get a full quorum anytime soon, and again, that's several months away because we still need another person, to be nominated to a slot in order to get a quorum in that person to be, gone through the entire Senate confirmation process. Even once we get there, there's going to be a huge backlog, of cases, and it's going to take the board a while to dig those out.

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Speaker 2

Now, the last time this happened, we have had this before where we did not have a full quorum. They did move through it fairly quickly, and unfortunately, we got some pretty, short decisions on some of these things. So they probably will make some haste as they get through them. But, I personally in favor of them making good decisions rather than quick ones.

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Speaker 2

And so it hopefully will be some time before they get through the backlog so that we don't get bad decisions. But the impact, of course, is that, without the full, quorum, we can not have any reversal of Biden era policy. Which would, of course, be mostly, negative for employers. So, hopefully we, get a full board soon or at least a quorum and are able to move some of this stuff along.

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Speaker 2

So just to give you some background of where the board is, and administrative law judges, while we, wait for, the continued nomination and Senate confirmation process and for the government shutdown in, the Fifth Circuit has held that there are statutory limits on the president's power to remove board members. And that ALJ is likely unconstitutional.

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Speaker 2

So the first ticket, you know, is going to, continue to, to, work through that. We'll get it here. Will wish to get a hearing and a decision there shortly. And we will decide for, you know, future, purposes and for Miss Wilcox as to whether or not the president really does have the power to remove a sitting board member.

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Speaker 2

The decision maintains the injunction, that enjoyed all, unfair labor practice proceedings, involving, the employers at issue, and addressed the propriety of injunction issuance as well. So, that's one of the things that I think that, is most important to this group is injunctions and how they are, issued and whether or not, they can be issued based on the current standard, which is fairly, easy, for the board to do.

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Speaker 2

And in most instances when we get injunctions, it is to return folks who have been, terminated for various reasons, returned to work. So very important issue for employers, but also going to look at whether the ultimate question of whether the board structure is constitutional, that will likely be decided by the Supreme Court of the United States.

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Speaker 2

It's, an interesting question as to whether or not the board can even be structured the way it is, the way the seats are structured so that one is coming. Court did not address potential remedy if the structure was unconstitutional. Of course, a remedy could be that every decision ever made by an unconstitutional board is no longer, valid.

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Speaker 2

I would think that would be a big problem for us. And so hopefully that is not the decision. I think the decision, that makes the most sense would likely be if they did find that it was unconstitutional. Is that, the reform board, going forward, all there it can be in decisions that weren't, from a reform board, although it did suggest that the costs from, could be solved by severing the limits on the presidential moving and then leaving the remainder of the statute intact.

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Speaker 2

So we could have that as an outcome, if that is what the the court decides that we can just sever those limits, and therefore everything else stays where it is. And we don't have the issues that would come from in saying that the entire, structure of the board is, does not work, and therefore neither did the decisions that they have made.

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Speaker 2

One of the other things we're seeing are rising filings with the board, which, you know, does not bode well for the fact that we have, a huge backlog. In our case, filings have really been steadily rising since the Covid

era. So in and 22, we had about 17,633 charges in petition filed, with the board's 15,869 of those were unfair legal practice charges.

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Speaker 2

And then we had, 1764 petitions for union recognition, in 2024, that increase pretty dramatically, to 24,587 charges and petitions filed, 21,300 of those were unfair labor practice charges. And then we have petitions for, union elections. In 3287. Instances that so we are seeing increased activity, at the board.

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Speaker 2

The regions, are extremely overloaded. And they're dealing with increased case intake and a reduced number. Board agents, the board agents have been treated a little bit differently than some of the other government agencies. They have not had, specific layoffs. With respect to the headcount for the regions, however, what they have done is let attrition slowly dwindle the numbers.

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Speaker 2

And so we don't have direct layoffs like we've had in many other sectors, but they're not backfilling or replacing people who are retiring or otherwise leaving. And so that's causing the the average number of board agents, across the board, and obviously with a reduced number of board agents, we get, fewer, fewer people to process, the, unfair labor practice charges and to do the investigations on those, which, again, creates even bigger backlog, that the heavy backlog is so bad in some regions that investigations haven't even started, in a number of areas.

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Speaker 2

And so, again, we're going to see slower and slower response times, to the extent there are, unfair labor practice charges being made. And, we're probably not going to see that, change anytime soon either, as, there seems to be no intent by the administration to replace any folks who are leaving. So takeout is going to continue to dwindle.

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Speaker 2

And if we are where we are next year, which is increased numbers of filings, the backlog is going to get bigger and bigger. The projected budget for next year anticipates a reduction of 99 full time staff, which will bring the total staffing to 1152 full time employees in DC and the 26 field offices, which is a fairly significant decrease from what it would have been ten years ago.

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Speaker 2

Right. That would turn quickly to some union trends that we're seeing. We are seeing union growth in some, sectors. Those are, private sectors, not public sectors, of course, public sectors are not being increased, at all. We are seeing regional, unionization differences. There are geographic hotspots. And then there are also, you know, places where there are quite zones.

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Speaker 2

The private sectors, Hawaii and New York continue to lead in unionize rights, while Carolinas and South Dakota are very, very low. And so, not a big change. You know, New York has traditionally been fairly hotspot, place for labor. Send out a huge change there. Hawaii is an interesting one where we are seeing more and more, unionization there.

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Speaker 2

They don't have the potential, of course, to really incredibly raise the rates of unionization we're seeing just from a sheer size, of the employee population there. But we are seeing a spike in Hawaii. And then we also seeing our, some, seasonal spikes in union petition filings, in 2024 and April, we saw 236 petition filed.

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Speaker 2

But then in May of 2024, it started it went down to 215. And then September down to 207. So we are seeing some, some lowering in petitions, being filed for union elections. But there's a lot of reasons around that the that, can change every year. But we also continue to see seasonal spikes.

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Speaker 2

So we think that those, will continue, youth participation in unions has been fascinating. Especially, I think, from the seats that Kate and I sit in, it is really interesting to watch, the younger generations, really get invested, in union organizations and especially the use of social media as a campaign tool. You know, unfortunately, I think it is a big deal for the concept and not a lot of knowledge of the actual workings of it.

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Speaker 2

Which makes it interesting, as you will, see, there's a lot of, folks who will be interviewed about their interest, in unions on campuses, and they give you some pretty wild explanations for why they think it's a great idea. We'll see if that continues. As they, spend time in the actual workforce.

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Speaker 2

But for now, they are very, very, very interested in it and are, incredibly, I have to give them credit. They're incredibly impactful when it comes to, using social media as a campaign tool, which was not something that we traditionally saw into the last few years. It has, pushed us all a bit to become more social media savvy, including employers.

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Speaker 2

And so if you are not, social media savvy and aren't using that at all, and, what you're using to communicate with your folks, that's probably the time, because a lot of the war that it's getting waged, in this world is, getting, raised on social media so highly, advocate for it, at least to be watching, what is going on?

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Speaker 2

Because, it's definitely a tool that at some point you will have to become proficient at, with, especially if you're trying to avoid a union, because they're very, very, active in social media when, they're having elections right now.

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Speaker 2

We, have several trends that are continuing to shape the labor landscape. The unions that are driving the most activity are the IBT, SEIU, and you have CW. I personally have seen, a lot of uptick with the I of seen the communication workers, appearing in an areas that I would not traditionally have thought that they would appear in, some more, typically heavy, manufacturing, that, I would not have thought they would have been interested in, they are.

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Speaker 2

And so it's been really interesting to watch this. Of course, the Teamsters and the SEIU have always been very, interesting workers. They they have always been very, the Teamsters especially, tend to be aggressive and have always been and, the same areas. And so we're not seeing them in different areas, like we are the commercial workers.

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Speaker 2

But, they continue to drive a lot of the campaigns that we're seeing smaller workforces to, to our, key drivers for organizations. Now, over the past year, the majority of the petitions that were filed for for units, 50 employees or fewer. Couple of reasons for that. One is that I think that it has become easier for unions to target these smaller, groups, because they have a better ability to, to work within the groups quietly, before the unions, the employer is able to find out about it.

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Speaker 2

The second reason is, their beachheads, their the way the union tries to get a toehold into the employer if they're able to, organize a small group, within, the employer, then it makes it much easier for them to expand later. One of the things we work on a lot when we are, trying to deter, a union from coming to an employer is to actually expand, the, the, the unit description, which is seems really counterintuitive.

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Speaker 2

You think, oh, gosh, you know, we want to have the smallest group possible that we're, arguing should be unionized. We actually look for a larger group. And the reason we work for a larger group is you tend to have a lot more, differences in opinions. You have a lot more ability to reach folks with, you know, the counter arguments as to why unions are good, and it just makes it much harder for the union overall to win election.

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Speaker 2

So, they do tend to target the smaller, employers and the smaller bargaining units when they are working to get in. But pay attention. You know, there are certain, geographic hotspots like we've discussed, like in New

York. And if you're in those areas, where you're seeing a lot of, union, organization and, when the other ones, we're seeing Atlanta, Los Angeles, Detroit, Philadelphia, if you're in those cities, you know, keep your eyes open, because we want to continue to, make sure that we're being thoughtful about, other things that, we do that cause the union to want to come and visit us in the

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Speaker 2
first place.

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Speaker 2
Organizing in general is showing signs of slowing from us. Currently elevated pace, based on the year end reviews that we get from Bloomberg Law and the midyear review that we've recently seen. A lot of that probably is around the fact that we have had the change in administration and that we have, such a standstill at the board, unions obviously not going to utilize its resources.

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Speaker 2
Right now, because they know that they're most likely going to reach a standstill at some point. So I think, this is circumstantial to a certain extent. Because of, the administration and the, the board not being completely functional at the time. But the good news is that unions have, not only participated in a few years, but also won fewer representative elections in the first half of 2025, than we usually see in the first half of the last three years.

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Speaker 2
With, only with 624 wins and 771 elections, and then the number of workers gaining union rep positions is also declined. We have, gone down, to 37,512 workers organized in the first half of 2025, which is a significant decline from 2020 for the first half, which it with had just a hair, over 64,000 workers who were unionized.

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Speaker 2
And with that, I am going to turn it over. Well, mayor, it looks like we have one question with the government shutdown, is the NLRB working? No, not right now. That we don't have anything going on, until we, see the shutdown turn around. So now I'll turn it over to Kath.

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Speaker 3
You we go and we will talk about some NLRB guidance. But before we do that, I will apologize and say if it looks like I'm sitting in the dark, I am, the place where I am right now had a power outage, so power and internet all went away. So we are strictly in making it work territory using, my personal hotspot.

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Speaker 3

So I apologize for being in the dark, but it kind of fits with the theme because we're a little bit in the dark about what's going to happen with the National Labor Relations Board as we move forward. The first thing that we're expecting to see once we get quorum is a lot of policy reversal. So, two weeks after his appointment, acting general Counsel Callan signaled pretty clearly that he intended to undo a lot of what his predecessor had done.

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Speaker 3

He issued, guidance memorandum 2505. I only mentioned that because we're going to be seeing a lot of other numbers that did a number of things. At the start, it rescinded over 30 different Biden era memos. It shifted some interpretation. It gave us some guidance on non disparagement and confidentiality clauses. You will recall a huge hubbub we had where the, Jennifer Brasier came out and said, you can't have non-compete, you can't have confidentiality agreements.

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Speaker 3

They violate the law. And we were all sweeter. And every indication is that this board is not going to follow through on that. The memo also really took a look at some of the more challenging and difficult decisions that we've had to deal with as employers for the last few years.

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Speaker 2

So know that.

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Speaker 3

Under the the national exact thing directives, concerted protected activity, right? One or more employees banding together to argue for better terms and conditions of employment. Jennifer Bruce's vision of what was concerted protected activity activity was very, very broad. I mean, like it covered almost anything bad that an employee could do at work. And Talon's memo said, look, we're going to take a much more reserved look at that and and take it back to more of a traditional standard.

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Speaker 3

It also promised to take a look at remedies, if you have had the misfortune of having an unfair labor practice charge any time in recent years, you learned that it was really hard to settle anything because the board in many times was trying to get more through settlement than what it could have possibly gotten by going through the hearing process itself.

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Speaker 3

And Karen's memo said, look, we're going to go back and we are going to seek remedies. We're going to seek resolution, because really, that makes it easier to vindicate the act and clear up some of the backlog of cases that they have. So that's a good thing. Part of that remedial relief is going to be saying, look, all of these things that we used to try to get that we had to have noticed posting that we had to have an admission of guilt, that

we had to have all of these things were no longer necessarily going to have to have unless it's a bad actor or a really, really significant case.

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Speaker 3

Moreover, we're not going to be looking for kind of really expansive monetary remedies that just didn't make sense. Right? Yes. They're still going to try to get back pay for people, but they're not going to try to get every different kind of law that you could possibly tangentially in a third alternate universe attribute to whatever the underlying unfair labor practice was, there is going to be a much more focused, much more intent look at trying to resolve things before they get to the hearing.

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Speaker 3

And allowing parties to resolve things on their own. So a lot of times when an unfair labor practice charge is pending, the parties will get together and say, hey, look, can we just resolve this when that happens? It's an informal settlement and the charging party has to go to the board and say, look, we've settled this. I would like to request to withdraw it, but the board doesn't have to allow that request to withdraw.

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Speaker 3

And in recent years they've been reluctant to leave. The board didn't like what the settlement agreement was. So hopefully that's going to go away. We're going to have a much easier time in settling cases and getting them resolved, which is what we should do. As long as you can arguably say that whatever the parties have come up with, vindicate the act right?

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Speaker 3

Exercise.

00:31:50:01 - 00:31:50:20

Speaker 2

Okay.

00:31:50:22 - 00:32:20:05

Speaker 3

Memorandum 2507 talks about the recording of collective bargaining sessions and takes the position that look, it is a per se violation of the National Labor Relations Act to record a session without telling the other party about it. And I have had folks try to do this. I am I am paranoid enough. I'm sure Mekeisha does the same, that if the union leaves stuff in the bargaining room, like I walk around their stuff to make sure there's not some kind of a recording device, but it's not just that kind of recording.

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Speaker 3

It's also someone turning on their phone and turning it upside down and putting it on the table and recording without your permission. So that is a per se violation. Hopefully that will stop some of those recordings from happening. We also have General Counsel Memorandum 2508 which talks about salt in

cases. If you're unfamiliar, salts are people that the union deliberately plants with an employer to stir up union sentiment and to help people can help convince people to piece for a union or vote for a union.

00:32:55:04 - 00:33:12:24

Speaker 3

And one way that salt will do that is by getting a job and stirring up sentiment. Another thing that sometimes they will do is apply for the position with no real interest in getting the job, and then when they don't get hired, will file an unfair labor practice charge saying, you didn't hire me because you know that I am.

00:33:12:24 - 00:33:47:09

Speaker 3

For the union. Salting cases has been historically extraordinarily difficult for employers to win. Just like super, super hard. And in 2508 talents memorandum says, look, we first, before we do anything, you have to determine that the employer was actually hiring. So they were looking to hire, they were hiring folks. And then if they were, before we ever ask the employer for evidence or to submit documents or to give testimony, we're going to figure out whether the salt the employees actually wanted to be employed at the employer.

00:33:47:11 - 00:34:22:13

Speaker 3

So were they genuinely seeking employment? Did their applicants have mass submissions? So they were applying to 300 employers all at once. Was there anything to indicate a genuine interest that they actually wanted to work for that employer? They're going to assess the applicants behavior for that sign of genuine interest. Any sort of antagonistic intent. So for example, sometimes salt will put on their employment application in the hobby section that one of their hobbies is, submitting unfair labor practice charges.

00:34:22:15 - 00:34:38:03

Speaker 3

Right. Well, you can imagine as an employer, I see that. And that might be a red flag for me. But even if employers don't see it, the salt would claim that they did. And then if they didn't get hired, it's because they put that on their application. So the board says, look, we're going to look at all of this.

00:34:38:03 - 00:35:03:04

Speaker 3

Did the person actually want to work for this employer or not? And only if we have evidence that they actually wanted to work for the employer. Are we going to take the next step and then talk to the employer and get all of the evidence that we need? So good news on that front. We also have General Counsel Memorandum 2510 guidance for deferring unfair labor practices.

00:35:03:06 - 00:35:29:11

Speaker 3

If you have a union, if you've had to deal with a union, you know that oftentimes the subject of an unfair labor practice charge will be something that arose under the contract itself and could be subject to the grievance. And arbitration procedure. And then you've kind of stuck maybe with both, like, I've got an unfair labor practice charge heading down one past, side grievance arbitration, heading down the other path, which can be very complicated.

00:35:29:13 - 00:35:54:00

Speaker 3

And for many, many years, the board had a process of deferring the charge to the grievance and arbitration procedure. Right. In a foundational tenet, if you will, of federal labor law is that you want people to work things out through arbitration, through understanding, through bargaining. Right? That's kind of the bedrock principle, not going litigation route with the board.

00:35:54:02 - 00:36:13:12

Speaker 3

And see, the board would say, look, if if you already have a grievance filed that covers this or you, the employer, agree to waive any timelines if they want to file a grievance about this, we agree that we're going to defer to that. We're going to wait and see what happens in grievance arbitration before we pick back up on the unfair labor practice side.

00:36:13:14 - 00:36:32:08

Speaker 3

Under President Biden's board, the board was just less likely to do that. They didn't like to defer, they wanted to keep the case for themselves and move forward, which again, made it super difficult for employers because I was fighting two different battles on two different fronts. So can this memorandum says, we're going to go back to that.

00:36:32:09 - 00:36:53:21

Speaker 3

We're going to defer cases if they meet the criteria, if everybody agrees that they should. And really we're going to focus on that, negotiate a dispute resolution process because that's what the parties agreed to at the outset. Another piece of this, if you were lucky enough to get a case deferred, you used to have to send in quarterly updates.

00:36:53:21 - 00:37:14:05

Speaker 3

Right. The arbitration is still pending, or we're still waiting on a response from the arbitrator. Now that goes to biannually. So if you have cases that have been deferred you have to update the board biannually. And what's going up with that. All of this is aimed at streamlining the process and dealing with some of the limited staffing that Mickey should have talked about.

00:37:14:05 - 00:37:42:17

Speaker 3

I mean, you can imagine if we already had a backlog in January which acting general Counsel Cohen admitted that we did, how much worse it's going to be now when we haven't had quorum, when staffing cuts are going to come in and we're going to be coming off however long the government shutdown lasts. One thing to note, there's a peculiar part of this where, certain kinds of deferral cases can be appealed to court in certain can't.

00:37:42:19 - 00:38:07:00

Speaker 3

I'm going to hope that none of you all ever end up in a situation where you have to worry about appealing deferral decisions or the union appealing those. But if you do, just know that there's some different rules about them. It is a.

00:38:07:02 - 00:38:17:23

Speaker 3

Major.

00:38:18:00 - 00:38:21:15

Speaker 2

It went forward on my end. Cat. You don't see it.

00:38:21:17 - 00:38:47:04

Speaker 3

I cannot. Oh wait, now it just popped up. This is the dangers of, you know, not having power. So injunctions under ten J of the act. One of the big sticks that the board has had for a very long time is unions have often asked for is to say to the board, hey, board, look, we think that what the employer is doing is so terrible and is so bad.

00:38:47:04 - 00:39:08:23

Speaker 3

We need you to go to the court right now and have the court either force the employer to do something or prevent the employer from doing anything, because one of the quirks, as the National Labor Relations Board is they don't have enforcement power on their own, right. They can ask and we can refuse. And if they want us to do it, they have to have a court enforce it.

00:39:09:00 - 00:39:40:23

Speaker 3

And so injunctions are really meant to be those things that are huge. So we're going to stop a business from closing down or something that cannot be undone later or that money can't fix. But we have seen, the Biden board use injunctions in really, ways that it wouldn't have been done in the past, like forcing employers to hire somebody back or truly stopping, sales or spin offs or shutdowns.

00:39:40:23 - 00:40:09:24

Speaker 3

It's like pure managerial type decisions and towns memoranda and said, look, we're not going to do that. We are going to focus on cases where there is a very high risk of remedial fear. So you're firing someone because they supported a union, or an employer is refusing to sit down and bargain with the union in good faith. It also standardize the approach that we're going to use to figure out whether an injunction should issue.

00:40:09:24 - 00:40:31:13

Speaker 3

So different court to different standards, for when an injunction should happen. And this memo says, look, every region is going to apply the Supreme Court, the United States injunction, the more we're going to look at likelihood of success on the merits, whether there's irreparable harm, right, something that can't be undone later. We want to balance the equities and then whatever the public interest is in this.

00:40:31:15 - 00:40:57:16

Speaker 3

So for the jurisdictions that had a lower standard, it's raising it, meaning it's going to be harder for the board to get injunctions. The memo also told all the regions that look, if you think this is an injunction case, you need to tell us sooner rather than later the practical impact of the backlog of cases that we had with the board meant that we could be months, if not years, down the road.

00:40:57:18 - 00:40:58:09

Speaker 2

Whatever.

00:40:58:09 - 00:41:20:02

Speaker 3

Happened in the board making an injunction? A that's really problematic because you're asking me to undo something or to do something that has happened years ago, and it kind of undercut the board's argument to begin with. If this is truly right, terrible, and there's irreparable harm going on. And you waited two years to bring this, is it really irreparable harm?

00:41:20:04 - 00:41:46:07

Speaker 3

So there's going to be a focus on identifying the cases that fit within that tinge standard and bringing them much earlier on. There's also going to be a focus on any kind of interim settlement to resolve issues promptly. So can you carve out pieces and settle them? So it streamlines things. It makes it faster and doesn't have these sort of big injunction type issues hanging out.

00:41:46:09 - 00:42:07:22

Speaker 3

You should also be on the lookout for some things to think that we're going to see. We haven't yet. But you all know that the board took the position a couple of years ago that employers can't have what's known as captive audience meetings, in which we require employees to attend in meeting to talk to them about our position on unionization.

00:42:07:24 - 00:42:26:24

Speaker 3

For decades, many decades that had been absolutely legal in this country because, as I the employer and paying you the employee, I get to tell you what to do, even if that is attending a meeting so I can talk to you about my beliefs about anything ranging from unions to why, the Cheshire Cat is the greatest Disney villain ever, right?

00:42:27:00 - 00:42:51:23

Speaker 3

We get to decide that, the answer was yes and said no. No captive audience meetings whatsoever. I expect that we're going to see Trump's board reverse that and again, permit those meetings to happen. I also think we're going to get some different guidance on what we can do with nonspecific clauses and confidentiality clauses and severance agreements that has been up in the air for the past several years.

00:42:51:23 - 00:43:15:06

Speaker 3

And we've had to have carve outs to make sure that people understand that they can still complain about things that might follow up under the National Labor Relations Act. It's been cumbersome. It's been difficult. These kinds of things have been challenged because, generally speaking, our belief in this country is that, you know, two grown consenting adults can consent to anything that's legal in a contract, right?

00:43:15:06 - 00:43:45:09

Speaker 3

It's a matter of contract principles. Jennifer Brasier disagreed with that. So I expect that this board will we'll go back to some of those more common ideas about what we can put into severance agreements or settlement agreements. I also expect that we are going to see a change in how elections might kick off. There was a case that came out, some acts that really looked at shifting the burden to an employer to request a secret ballot election.

00:43:45:09 - 00:44:08:02

Speaker 3

If the union filed a unionization, it didn't end up in practice being quite as big of a deal as we expected it to be when the case came out. But still, there's this case that stands for the proposition that if a union hands you a cocktail napkin that says we have majority support, and we want you to recognize us, that the employer has certain affirmative actions that they need to take.

00:44:08:04 - 00:44:35:01

Speaker 3

I expect that we will see that, change. I also expect we're going to see the board litigating on its own. There have been a number of states, New York and California, and notable among them, that have passed laws that if for any reason, the National Labor Relations Board is not functioning or is not acting, then the State Employment Relations Board can step in and fill the gap while practically that might seem to make some sense, right?

00:44:35:01 - 00:44:56:20

Speaker 3

Because if nobody's going to act, someone should. I am given to understand that no employer that is not in or isn't public sector in New York or California really wants either of their in police relations board to be handling these matters, that it really do you run the risk of some pretty disastrous decisions and consequences for employers?

00:44:56:22 - 00:45:15:24

Speaker 3

The board has filed litigation to stop that. So know that that is happening. No, that litigation is going on to stop it. So if you happen to operate in a state where the state is trying to encroach upon the National Labor Relations Board jurisdiction, know that the board is prepared to protect its jurisdiction. So what do you need to do now?

00:45:16:01 - 00:45:37:20

Speaker 3

What you need to do now, if you are a non union employer and you would prefer to stay that way, and it really is time to be pro employee, right. So we know that employees now want they want transparent communication. They want to know what is going on at the company. They want to know what is happening with them in their career.

00:45:37:20 - 00:46:01:00

Speaker 3

They want to know how their company is fitting within the world. Right. More information is better. They are also absolutely increasingly looking for more and training and compliance. They want training. They want to better themselves. They want those opportunities right. And then last but not least, employee engagement. I said that we need to focus on being pro employee, and I absolutely mean that.

00:46:01:02 - 00:46:23:20

Speaker 3

We want to be pro employee, not necessarily anti union. If you happen to be a employer that already has a union, there are things that we can do. We want to focus on data driven decision making, right. Invest in wage surveys to better understand the nature of your talent in the competition, and to help you negotiate that next collective bargaining agreement.

00:46:23:22 - 00:46:42:05

Speaker 3

Right? Target those wage adjustments for recruitment and retention. I'm sure Mekeisha would say that the two things that she hears most at the collective bargaining table is we need to focus on retention, and we need to focus on recruitment. So being armed before you go in is a good strategy. Look into the newer priorities of the younger employees.

00:46:42:07 - 00:47:05:01

Speaker 3

They are different than some of your older employees. And one of the things that I have noticed, for example, with Gen Z, is they like unions because they are much more comfortable having somebody else fight their battles for them. Right. And that is just that is a shift. And it is different from some of the different generations that have been in the workplace.

00:47:05:07 - 00:47:26:23

Speaker 3

So thinking about how that impacts how you interact with folks, what are the need that we have, like truly our needs and how we can work with employees to get there and then just preparing for higher costs, potential for recessions and strikes, strikes. Right now, we're seeing a resurgence in the willingness of employees to go on strike.

00:47:27:00 - 00:47:49:09

Speaker 3

Strikes are seen as kind of sexy, for lack of a better way of putting it. And we're seeing more strike votes happen. I will tell you that once somebody goes on strike, they don't want to do it again. But just be prepared

for that. Thinking about collective bargaining. If you are lucky enough to have a union, know that there are some challenges for employers and unions alike.

00:47:49:11 - 00:48:14:19

Speaker 3

Yes. The Federal Mediation Conciliation Service is no longer a recent resource for us in 2025. By executive order, the SNCF staff was cut from around 200 or so to less than or fewer than 20. Mediators are now only allowed to mediate large cases, not small cases, and they don't mediate grievances anymore. Some of those mediators and staff will return to work.

00:48:15:00 - 00:48:42:12

Speaker 3

But the proposed budget that we've seen indicates that future cuts to staff are pending. There has been some pushback, right? There are some people who are fighting for the fences, but we're not expecting big changes. So to the extent you've relied on absences or administration for help with your smaller slack, they may no longer be a resource. We also have a challenge with first contracts.

00:48:42:14 - 00:49:08:23

Speaker 3

A 2022 analysis by Bloomberg Law found that at first, contracts are the very first contracts that a union and a company negotiate, on average, takes over 460 days to negotiate, which is a really long time within that. An employer has to maintain the status quo, so we don't get to make a lot of changes. And employees get increasingly frustrated because when they vote for a union, they're expecting change now and they don't get change now.

00:49:09:03 - 00:49:30:20

Speaker 3

And so managing those expectations and frustrations is going to be critical and key for employers next time. Legislative efforts. It seems like this has been going on for, for 15 years or so that at least on the federal level, one group or another is looking to change federal labor law. I mean, it was enacted in 1935, and things have changed a little bit.

00:49:30:20 - 00:49:55:21

Speaker 3

So it might not make sense to update it somewhat, and certainly not the way Senator Hawley is proposing, his proposal, along with the faster labor contracts Act, were both introduced this year into Congress. And both of those proposals would call for amending the National Labor Relations Act to require that after workers vote for a union, that negotiations have to begin within ten days.

00:49:55:23 - 00:50:16:19

Speaker 3

As you know, as I know, nothing happens within ten days, right? It just takes longer than that to get your ducks lined up. But the law would require that. It would also, both laws would require that if no agreement is reached within 90 days, that the dispute gets referred to mediation. Now, I'm not sure who would be mediating it since Fox was gutted.

00:50:16:19 - 00:50:39:09

Speaker 3

Gutted, but perhaps that would bring that focus back then the laws go on to say, look, if you don't get the case mediated or the contract mediated within 30 days, or any additional periods that both sides mutually agree on, they may get sent to binding arbitration and through binding arbitration, this third party arbitrator will tell you what's going to be in your initial contract.

00:50:39:11 - 00:51:03:20

Speaker 3

I don't have to explain to you why you don't want a third party who doesn't understand your business to be telling you what you must agree to in a contract with all of your employees? I think it could be pretty disastrous. But those are the things that are sort of afoot currently in D.C. when it comes to amending the National Relations.

00:51:03:22 - 00:51:24:14

Speaker 3

Last key, and this is just me hopping up on my soapbox. Over the years, I have found that, and I'm sure you have seen this thing that in times of uncertainty, in times of economic uncertainty, sometimes people and companies are willing to trade away management rights instead of giving wage increases or instead of making changes to benefits.

00:51:24:14 - 00:51:41:23

Speaker 3

And that can be very tempting because it doesn't cost anything. And it might not cost anything in the short term, but I promise you it costs something in the long term. So protect your management rights. They your infant child, they're fragile. You need them. Hold on to them and do not let anything bad happen. Thank you.

00:51:41:23 - 00:51:43:00

Speaker 3

Joe.

00:51:43:02 - 00:52:12:16

Speaker 2

Thanks, Cat. All right. I don't see any questions in our Q&A, so, I will let everyone know. First of all, we're so grateful that you spent the time with us. And we hope this was informative. If you have additional questions, you will be receiving, follow up email, from Ross Brown, tied with, both our contact information, the materials from today and also a survey.

00:52:12:18 - 00:52:46:07

Speaker 2

Please take just a few minutes to complete the survey. It helps us, refine what we're doing. There's an opportunity for you to suggest, topics for the future. And we really appreciate any input that you can give to us. There, those things to help us greatly. We really are very grateful for the, as Steve mentioned, at the beginning, this is the first webinar for the week of Manufacturing Week as we celebrate that, coming up tomorrow, we're going to be talking about PFAs and the future of our environmental enforcement.

00:52:46:07 - 00:53:04:24

Speaker 2

Our colleagues, Chris Kim Kohn and Teri Montoya are going to be presenting on that. So if you have not signed up for that one and, want to, be on top of what's coming, in the future of environmental enforcement, please take just a few minutes to sign up there, and attend that presentation as well.

00:53:04:24 - 00:53:17:08

Speaker 2

And again, thank you all for being here from, our manufacturing folks and from Frost Brand Todd. And we look forward to seeing you. In a future setting.