NY Bill Would Complicate Labor Law Amid NLRB Uncertainty

By **John Bolesta, Keahn Morris and Christopher Williams** (August 25, 2025)

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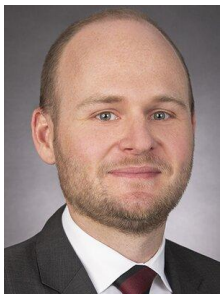

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With mounting uncertainty about the lack of a quorum and the near-term future of the National Labor Relations Board, New York state legislators are attempting fill the regulatory vacuum that has been left by the board.

On June 17, New York lawmakers passed S.B. 8034A, which would grant state agencies the power to enforce federal labor law if it is signed by Gov. Kathy Hochul.

Employers could face significant challenges if this bill becomes law, because it creates a state-level regulator over labor relations matters — including unfair labor practice charges and representation elections — that competes with, and may contradict, the NLRB.

Turmoil at the NLRB

During President Donald Trump's first term, the NLRB shifted toward a markedly pro-employer position. Since returning to office, Trump has not merely shown an interest in moving away from the pro-union policies of President Joe Biden's administration; rather, he has demonstrated a desire to bring wholesale change to the board through drastic actions that radically alter the foundation of American labor law.

Trump's sweeping transformation of the NLRB began with the firing of Biden-appointed general counsel Jennifer Abruzzo on Jan. 27.

Trump subsequently installed William Cowen as interim general counsel on Feb. 3, and he has been tasked with undoing much of Abruzzo's work.

While Trump replacing a Biden-appointed general counsel came as no real surprise, and was in keeping with Biden's own dismissal of Trump's general counsel, Trump has gone much further than other presidents in his efforts to reshape the NLRB.

On the same day that he fired Abruzzo, Trump took the unprecedented step of firing board member Gwynne Wilcox, a Democratic appointee, without cause. Wilcox's dismissal has been the subject of much litigation that remains unresolved, leaving Wilcox unemployed.[1]

At the time of Wilcox's firing, the five-member board had two vacant seats, and following the decision to terminate Wilcox, the board has only two sitting members. Under the National Labor Relations Act, three members are required to form a quorum that is necessary to exercise the board's powers.[2]

However, there is some indication that the NLRB's quorum may soon be restored. On July 17, Trump nominated Scott Mayer, Boeing's chief labor counsel, and James Murphy, a longtime NLRB attorney, to fill two vacant seats on the board, but the timing of their

potential Senate confirmation is unknown and could take months.

It appears that their nominations are designed to ensure that the board reaches a Republican-majority quorum at some point this year, especially with the impending expiration of NLRB Chair Marvin Kaplan's term on Aug. 27.

Whether Wilcox's legal challenges play out in her favor, or whether new members are appointed and confirmed, it remains unclear when the board may be able to act again.

In addition to lacking the required quorum, the NLRB also faces other substantial challenges. Not only are there numerous ongoing court cases challenging the constitutionality of the NLRB, but years of underfunding and hiring freezes have led to staffing shortages that continue to impede the board's ability to efficiently carry out its statutory mandate.[3]

The New York Legislation

Increasingly, progressive states are searching for means by which they can empower unions and fill the void that has been left by a powerless NLRB, including through legislation. However, these legislative efforts are squarely in opposition to the pro-employer approach of the Trump administration.

For instance, New York legislators have moved swiftly to bolster state protections for unions. To that end, on May 15, Sen. Jessica Ramos, D-Queens, introduced S.B. 8034A, which is intended to amend New York Labor Law Section 715 to bring private employers under its authority.[4]

The law would be amended to exclude private employers, only where the NLRB "successfully asserts jurisdiction over any employer, employees, trades, or industries pursuant to an order by [a] federal district court."

In effect, if the bill becomes law and the NLRB does not actively assert its jurisdiction through the federal courts, New York's Public Employment Relations Board would be free to exercise its authority over private employers in the state.

PERB would then be empowered to conduct private sector union elections, investigate and remediate unfair labor practices, and take any other necessary steps to administer federal labor law.

In a recent written statement, New York Assembly Labor Chair Harry Bronson, D-Rochester, said, "With attacks at the federal level, it is up to the states to lead the way and in New York State, we value the rights of our workers, their health and safety on the job, and our strong principles of unionism."

The bill would also create impasse resolution procedures. It adds Section 702-c to the labor law, which would allow PERB to determine whether the employer and the union are at an impasse if they have not reached a first contract within 40 days of certification or recognition.

Section 702-c would also create procedures under which PERB could appoint a mediator to assist the parties in reaching an agreement.

If the parties cannot reach an agreement within 30 days of the mediator's appointment,

either party may petition to have an arbitrator appointed to decide the matter.

The arbitrator would then have the authority to impose a collective bargaining agreement on the parties with terms that the arbitrator deems appropriate.

The bill quickly passed the legislature after being introduced. It is unclear if Hochul will sign the bill into law, as her track record on employment issues is mixed.

While she has signed some employee-friendly bills into law in the past, such as a pay transparency bill in 2022, she has sided with employers on other issues, including by vetoing S3100A in 2023, which would have broadly prohibited noncompete agreements.

Similar Legislation

California and Massachusetts have also introduced legislation that is intended to empower state agencies to perform many of the NLRB's functions.

California A.B. 288, which was introduced on Jan. 22, would expand the jurisdiction of the state's PERB to decide unfair labor practice cases involving anyone who is defined as a "worker" under the NLRA.[5]

Introduced on Feb. 27, Massachusetts S.B. 1327, would authorize the Commonwealth Employment Relations Board to decide labor disputes over private sector workers in the absence of NLRB jurisdiction.[6]

Legal Hurdles

The New York bill, and others that are similar, will likely face legal challenges if they are signed into law.

Generally, where a state law is in conflict with federal law, the state law is deemed invalid, or preempted. Federal labor law is no exception. Under a long line of U.S. Supreme Court precedent, states generally may not regulate issues related to private sector unions.

Most importantly, under the Supreme Court's 1959 decision in San Diego Building Trades Council v. Garmon, states are generally precluded from regulating any activities that the NLRA protects or prohibits, or arguably protects or prohibits.[7]

Cowen's recent comments further underscore this point. In an Aug. 15 press release, Cowen stated that such state measures "very likely would be preempted by the National Labor Relations Act," and, citing prior precedent, noted that states are not allowed to regulate conduct "that the NLRA protects, prohibits, or arguably protects or prohibits."

Cowen also reassured the public that concerns about the board's ability to fulfill its statutory duties are unfounded, as regional offices continue to process unfair labor practice and representation cases, with normal agency operations continuing to the greatest extent permitted by law.

Parties that challenge these state laws will make a compelling argument that they are preempted. The conservative majority on the Supreme Court may be reluctant to overturn more than half a century of precedent to allow states to implement this type of pro-union scheme.

Key Takeaways

The situation at the NLRB, and ongoing state attempts to fill its regulatory vacuum, create significant complexity for employers that are operating in New York and other progressive jurisdictions.

The rapid advancement of New York's S.B. 8034A, if enacted, would create a dual-layered and potentially conflicting system in which employers could be subject to both state and federal labor agencies, depending on the NLRB's operational status.

Recent federal developments indicate that some resolution may be on the horizon.

Trump's recent nomination of Mayer and Murphy is likely to restore the board's quorum in the near future, pending Senate confirmation. Should the nominees be confirmed, the NLRB would regain authority to issue decisions and assert jurisdiction over labor disputes nationwide, potentially preempting any new state-level enforcement efforts, such as those in New York.

The nominees' management-side credentials signal a likely continuation of the pro-employer direction under the current administration, but their extensive experience with unionized workforces may moderate abrupt policy swings.

Still, the backdrop of legal battles regarding Wilcox's removal — and the procedural irregularities surrounding her dismissal — add uncertainty to the board's future composition and legitimacy.

Compliance Tips for Employers

Given these dynamic and overlapping risks, employers should consider taking the following steps.

Stay proactive with federal law compliance.

Until the NLRB quorum is restored and the scope of PERB's authority is fully litigated, federal labor law continues to govern most private sector labor relations. Employers should reinforce compliance efforts with the NLRA and avoid making decisions solely based on anticipated state-level changes.

Monitor state legislative developments.

New York employers should closely track whether Hochul signs S.B. 8034A, and should prepare for rapid implementation if it is enacted. Similarly, keep an eye on legal challenges, particularly those that are based on federal preemption doctrines. Employers should also assess their risk exposure if PERB begins to assert jurisdiction over private sector labor disputes.

Review impasse and bargaining strategies.

The potential for PERB-appointed arbitrators to impose collective bargaining agreements significantly alters bargaining leverage. Employers should revisit internal procedures for contract negotiations, contingency planning for first contract situations, and documentation of bargaining in good faith to mitigate risk in the event of state intervention.

Prepare for dual complaints and parallel proceedings.

If state agencies begin to assert jurisdiction while the NLRB regains its quorum, employers could face complaints in two forums for the same conduct. As such, employers should establish clear protocols for handling parallel investigations, preserving documentation, and communicating with both the NLRB and state agencies. Further, consider internal training to recognize overlapping legal obligations and avoid contradictory responses.

Anticipate shifting precedent.

The new NLRB appointees are poised to review — and likely reverse — numerous Biden-era pro-union precedents. Employers should be prepared for fast-moving legal changes, and reevaluate policies, handbooks and labor strategies accordingly. Until three members concur in overturning precedent, many past decisions — even employee-friendly ones — may remain binding.

Looking Ahead

While restoration of the NLRB's quorum appears imminent, the road ahead remains complex. Conflicting state and federal authority, continuing litigation over the board's composition, and the likelihood of further vacancies all contribute to the ongoing uncertainty.

Until the dust settles, prudent employers will prioritize compliance, monitor legal developments and maintain flexibility in their labor relations strategies to protect their interests in this volatile environment.

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[1] See Trump v. Wilcox, 145 S. Ct. 1415, 605 U.S. – (2025).

[2] See 29 U.S.C. § 153(a).

[3] See, e.g., Space Exploration Technologies Corp. v. NLRB, Consolidated Case No. 24-50627 (5th Cir. Aug. 1, 2024).

[4] https://legislation.nysenate.gov/pdf/bills/2025/s8034.

[5] https://legiscan.com/CA/text/AB288/id/3186817.

[6] https://malegislature.gov/Bills/GetAmendmentContent/194/H4000/1475/House/Preview.

[7] See San Diego Building Trades Council v. Garmon, 359 U. S. 236, 245 (1959) ("When an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board").