



Final Exam? NLRB To AGAIN Address Whether Grad Students Are Employees

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The issue of whether graduate students are employees under the National Labor Relations Act (NLRA) is an issue that has percolated at the National Labor Relations Board (NLRB) various times over the years. It's also an area where [the board has flip-flopped](#) on at least three occasions, holding at times that grad students are employees and at other times that they are not. Now, the NLRB appears poised to provide additional clarity on this issue.

On Sept. 20, the [NLRB issued a press release](#) noting it plans to issue a new rule regarding whether the NLRA covers graduate students. The release states, in part:

"The National Labor Relations Board (NLRB) will publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register on September 23, 2019, proposing a rule regarding students. Addressing a recurring question regarding the definition of 'employee' under Section 2(3) of the National Labor Relations Act (NLRA), the proposed rule would exempt from the NLRB's jurisdiction undergraduate and graduate students who perform services for financial compensation in connection with their studies.

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The basis for this proposed rule is the Board's preliminary position, subject to revision in light of public comment, that the relationship these students have with their school is predominately educational rather than economic.

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In announcing the proposed rule, NLRB Chairman John F. Ring stated: 'In the past 19 years, the Board has changed its stance on this issue three times. This rulemaking is intended to obtain maximum input on this issue from the public, and then to bring stability to this important area of federal labor law.' Chairman Ring was joined by Board Members Marvin E. Kaplan and William J. Emanuel in issuing the proposed rulemaking. Board Member Lauren McFerran dissented."

A new rule would have dramatic implications for private sector universities in the U.S. If graduate students are not employees under the NLRA, they do not have the right to form unions or claim other protections under the NLRA. Stay tuned to see how this unfolds.