



Labor Board Has Yet To Issue Significant Decisions Under Biden – Why?

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It has been approximately six months since President Biden [cemented a majority](#) at the National Labor Relations Board (NLRB), and we have yet to see a major precedent-altering decision issued. Why? A new report, [Biden Labor Board Progress Slowed by Covid, Briefing Speed Bumps](#), from Bloomberg offers some insight.

According to the report, “The Biden NLRB has been moving at a deliberate pace, calling for comments from outside parties in five cases in which it’s considering changes to board law. The comment period for its most recent invitation for briefs, which deals with mandatory arbitration agreements, closed March 21. The Trump board in 2017 dashed out of the gate with a series of five precedent-setting decisions less than three months after Republicans formed a majority. None of those cases were open to public briefing. The board is reconsidering two of those rulings.”

Bloomberg goes on to say, “The NLRB received \$274 million in annual funding in the spending bill signed into law last week, the same amount it has received since 2014. Eight straight years of flat funding has led to staffing shortages that have impeded the board’s early progress on setting new labor law precedents, said NLRB spokeswoman Kayla Blado. Other obstacles include the Covid-19 pandemic, which has raised administrative challenges as well as the need to address virus-related legal issues; the lingering impact of former member William Emanuel participating in cases despite alleged

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conflicts of interest, which has divided the board; and a large share of the board's caseload still reflecting the priorities of Peter Robb, the prior general counsel..."

In other words, there are a multitude of factors that may explain why we've seen some delay relative to prior boards in making a shift toward new policy. In any event, employers should expect significant change once the NLRB begins issuing precedent-shifting decisions – whenever that may be.

Nevertheless, while the NLRB may not be moving as quickly as some expected, the agency's general counsel, Jennifer Abruzzo, has been very active. She has indicated she wants to [make changes in labor law on various fronts](#), including the use of permanent replacements in strikes, employer communications during union campaigns, and much more. She also has altered how [regional NLRB offices approach settlement](#) of cases – insisting on more onerous terms – and expanded the [types of penalties](#) her office may seek when prosecuting violations of the National Labor Relations Act.

Bottom line: Labor law changes are underway – even if the speed at which we initially thought they would come isn't quite happening.