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# Labor Law Changes To Be Aware Of In The New Year

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**David J.  
Pryzbylski**  
Partner

2022 saw several changes in the nation's federal labor law, with a flurry of pro-union decisions coming out of the National Labor Relations Board (NLRB) after the November midterm elections. Companies should be aware of these developments in 2023, as more changes limiting managerial discretion and actions likely are forthcoming. Let's take a look at some of the major developments from 2022.

## Uniform Policies

The NLRB [reaffirmed](#) its standard on mandatory uniforms that prohibit the wearing of union shirts, buttons, or other insignia. The Board ruled that such a policy that prohibits the wearing of union insignia is presumptively unlawful, absent "special circumstances" which are difficult for an employer to prove.

## Consequential Damages Remedy

The NLRB expanded its [remedial power](#) by ordering consequential damages in all cases in which the traditional "make whole" relief is awarded. Historically, make whole relief included pay for lost earnings and other benefits. Now, however, employers who violate the act, resulting in loss of employment, will owe monetary relief for other "foreseeable harms" such as out of pocket medical expenses, credit card debt attributable to the loss of employment, and missed mortgage or rental payments and related fees.

## Micro Units Are Back

The NLRB returned to its pro-union standard for determining [appropriate bargaining units](#). The subject of much back and forth over the years, the Board reinstated an Obama-era standard which makes it easier for unions to request an election in a smaller (“micro”) unit within a larger company or facility-wide unit. The Board will again require an employer challenging the appropriateness of such a micro unit to show that there is an “overwhelming community of interest” between the micro unit and other employees not included in the proposed unit, a heightened standard that will make it easier for unions to organize employees.

## Restrictions On Employer Property Rights

The Board reversed precedent and found that a business can only exclude [contract workers](#) from its property when the contract workers’ protected activities (such as picketing, leafletting, etc.) “significantly interfere” with the property’s use or there is another legitimate business reason to eject the contract workers.

## Dues Check-Off After Expiration of a CBA

The Board [overturned](#) a Trump-era decision that had permitted employers to cease deducting union dues where the collective bargaining agreement requiring the deduction expired. The Board’s decision means that dues checkoff is still part of the “status quo” that employers are required to honor after a CBA expires, along with most terms and conditions of employment.

## NLRB Received More Funding

The Board was given a [\\$25 million increase](#) in its budget for 2023, following pleas from the agency that it would need to lay off employees if its budget did not increase. The NLRB wanted more than \$100 million in additional funding, arguing that a bigger increase was justified because its case load has increased 23 percent in 2022, driven in large part by a 53 percent increase in union representation petitions. But, even despite those increases, representation petitions are down 50 percent since 2001 and the NLRB’s unfair labor practice caseload has dropped 36 percent in that same time period.

## What Is To Come In 2023?

The NLRB’s General Counsel has signaled that many additional items remain on her radar, including making [captive audience meetings](#) unlawful, finalizing its [joint employer rule](#), forcing [mandatory union recognition](#), redefining how the Board defines an [independent contractor](#), passing a more restrictive standard for [employer work rules](#) that limit employees’ protected activity, and more. Employers should remain abreast of these and all other developments as we head into 2023. Stay tuned to the blog – more to come.