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Stepping Into A Void? New York Attempts to Extend New York State Labor Relations Act to Private-Sector Employers That Should Be Covered by National Labor Relations Act; NLRB General Counsel Sues Over Preemption Concerns

Labor Relations Update on **September 15, 2025**

On September 5, 2025, New York Governor Kathy Hochul signed into law what is dubbed an "NLRB Trigger Bill" amending the New York State Labor Relations Act. The statute itself is hardly a model of clarity, but its sponsors describe it as an effort to expand the jurisdiction of New York's Public Employment Relations Board ("PERB") to fill the gap at the National Labor Relations Board ("NLRB" or "Board"), which currently lacks a quorum and as a result is unable to fully act.

PERB primarily oversees public-sector employers in New York, but also regulates labor relations for private-sector employers within New York where neither the Railway Labor Act nor the National Labor Relations Act ("NLRA") provide coverage (such as for agricultural workers).

Prior to the new statute, the New York Labor Relations Act expressly excluded any employer covered by the NLRA. The plain text of the new law – which takes effect immediately – limits that exemption, such that the law allows PERB to act with respect to a private-sector employer when the NLRB does not successfully assert jurisdiction pursuant to an order issued by an Article III federal court over any "employer, employees, trades or industries."

The phrasing is quite odd, given that the federal courts generally do not have any rule on the NLRB asserting or not asserting jurisdiction, at least in the first instance before an appeal. Moreover, there is no explanation whatsoever as to how to determine when the Board has or has not asserted such jurisdiction. There simply appears to be a complete disregard for the NLRB's processes – which require multiple preliminary steps at the regional and/or administrative law judge level before the impact of the lack of a Board quorum is even felt.

This confusion is unlikely to last long. On September 12, 2025, the NLRB filed suit seeking declaratory and injunctive relief, alleging that New York's law "unlawfully usurps" the Board's authority by "attempting to regulate areas explicitly reserved for federal oversight, creating a parallel regulatory framework that conflicts with the NLRA." In doing so, the Board argues that New York's law is preempted based on longstanding U.S. Supreme Court precedent barring states from regulating conduct that is within the NLRB's jurisdiction. *See Wisconsin Dep't of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244-46 (1959); *Garner v. Teamsters*, 346 U.S. 485, 490-91 (1953).

While there are certainly questions about the NLRB's standing in the suit, we will continue monitoring this fast-moving action, as well as attempts to pass similar legislation in other states, like California and Massachusetts.

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