



Eye On The Law

MORE PRO-UNION CHANGES

YEAR-END PERFORMANCE REVIEW TIPS

AMAZON INDEPENDENT UNION UPDATE

BIDEN'S NLRB CHANGES YEARS OF ESTABLISHED LAW ON DAMAGES

This week the NLRB issued a controversial decision regarding damages awarded in an Unfair Labor Practice case. In *Thryv Inc. and International Brotherhood of Electrical Workers, Local 1269*, case number 20-CA-250250, The NLRB ruled that employers are now responsible **for “all direct or foreseeable” damages related to any violation of the National Labor Relations Act (NLRA)**. The Biden NLRB, in keeping with the Administration’s pro-union and pro-employee rights promises, **has altered the traditional “back-pay” damages awards to damage awards which may now also include out-of-pocket medical expenses, missed mortgage and rental payments, late credit card fees**—anything that the Board **considers a “foreseeable” outcome of a violation of the NLRA**. Management pundits have expressed concerns that this decision may lead to the potential for emotional distress damages.

Not surprisingly, Wednesday, the NLRB in a different decision, **restored Obama era union election rules regarding the scope of a proposed unit (voting group)**, clearly signally to Unions that they should invest in organizing and campaign work in 2023.

We will continue to monitor these issues. Please let us know if you would like a copy these decisions.

YEAR-END PERFORMANCE REVIEWS

Many of you are in the process of conducting year-end performance reviews. The following tips may be helpful.

1. The Document Itself

Remember that you're creating a document that *lives forever; in negotiations between your attorney and opposing counsel as well as in court*. Therefore, it should be **timely** in delivery, **consistent** in approach and **genuine** in judgment. Be direct, be honest and at the same time give praise where deserved.

2. Goal Setting

Quality performance reviews should include real, attainable goals for the future.

3. Gather Information About Your Employees

Before writing the review, take the time to gather all necessary and available information about employees.

4. Write a Draft Document

A quality performance review should not be completed in one sitting. *Consider writing a draft and putting it aside for a few days—then re-writing.*

ANOTHER AMAZON UNION UPDATE

As we have discussed, the independent Amazon Labor Union continues to grow in strength since an election win this past spring. Recently, Amazon and the NLRB were parties to a case in a U.S. District Court concerning the termination of a former Amazon employee. In a victory for the Union and the NLRB, the *U.S. District Court ordered Amazon to cease terminating employees for exercising their rights under Section 7 of the NLRA to organize collectively.*

Independent Unions rose dramatically in 2022 and experts believe this trend will continue in 2023.

If you have concerns about these or any other workplace or litigation issues, please contact David Ryan at david.ryan@ryan-ryan.net or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).

We thank you for your support during the past year and wish you Merry Christmas, Happy Holidays and a Joyous New Year. See you in 2023.

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