



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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