

California's AB 288: A New Era of State Labor Enforcement and Legal Uncertainty

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For a number of months, the National Labor Relations Board ("NLRB") has been in flux, operating without a quorum, and thus, unable to hand down decisions. In the absence of an NLRB quorum, the California legislature has sought to fill the gaps by enacting Assembly Bill 288 (AB 288).

ABB 288 expands the Public Employee Relations Board's ("PERB") jurisdiction by authorizing the administrative body to act where the NLRB has expressly or impliedly ceded its jurisdiction, including in cases where the NLRB would normally pre-empt the PERB. ABB 288 is triggered when the NLRB (i) lacks a quorum, (ii) faces constitutional injunctions, or (iii) fails to act within statutory timeframes. In such situations, the bill empowers the PERB to step in and conduct union elections, adjudicate unfair labor practice charges, and impose civil penalties or binding arbitration orders, practices typically in the purview of the NLRB.

Legal challenges are imminent. AB 288 directly tests the boundaries of federal preemption under the NLRB's enacting statute, the National Labor Relations Act ("NLRA"), which has long been interpreted by the United States Supreme Court to occupy the field of private-sector labor relations. In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Court held that the NLRB cannot issue decisions without a quorum, a vulnerability AB 288 seeks to exploit. The NLRB has already sued New York over its similar "Trigger Bill," and California's version—arguably more expansive—may face similar litigation from both the Board and private employers.

The bill was signed into law by Governor Gavin Newsom on September 30, 2025 and is currently in effect as of the date of this blog post.

Employer Takeaways: Navigating a Shifting Compliance Landscape

California employers should prepare for a dual-track enforcement regime. Key compliance tips include:

- **Expect delay**, AB 288 likely will face significant legal challenges before its provisions are enforceable.
- **Audit labor policies** to ensure they align with both NLRA and AB 288 standards, especially regarding union access and organizing rights.
- **Train HR and legal teams** on PERB procedures, which differ from NLRB processes and may include expedited timelines and broader remedies.
- **Monitor union activity closely**, as PERB may impose binding arbitration or civil penalties for

delays in bargaining or unfair labor practices—remedies not available under the NLRA.

- **Prepare for parallel proceedings**, as employers could face charges before both PERB and the NLRB, increasing litigation risk and complexity.

AB 288 signals a growing willingness among states to fill perceived federal enforcement gaps. Whether it survives judicial scrutiny remains to be seen—but for now, California employers should prepare to adapt to a more assertive and expansive labor enforcement environment.

If you have any questions concerning AB 288, please contact your usual counsel at Kelley Drye, or a member of our Labor and Employment team.