

The Supreme Court and Lessons from “Striketober”: What Should Employers Expect?

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A wave of labor strikes in October of 2021 led experts to dub the month “Striketober.” And this year, we saw the trend continue as companies across the nation faced a number of work stoppages through late-September and October. As the second Striketober comes to an end, we look at the general trends in labor organizing and what employers should expect in the months ahead.

First, the Supreme Court is poised to take action. The Court recently agreed to consider a case at the heart of the right to strike: Can employers sue unions in state court when strikes cause economic harm, such as destruction of property?

The case arises from a dispute between a cement company and its truck drivers in Washington state. Contract negotiations between the local Teamsters union and employer, Glacier Northwest, had broken down. In August of 2017, union leaders instructed drivers to bring their trucks back to the yard and strike. According to the company, the union intentionally timed this so that the concrete in the trucks had already been mixed, which could solidify in the drums and destroy them. The union countered that the trucks were left running so the concrete wouldn't harden. Glacier Northwest sued the union to recover damages.

This will be the Court's first major labor decision since 2018. If the judges side with the Glacier Northwest, it will likely open the door to more litigation between unions and employers when labor action causes economic harm to an employer. Be sure to look out for an alert when this case is decided.

Second, union support among American workers continues to grow. According to a recent [Gallup report](#), approximately 71 percent of Americans approve of labor unions. This marks the highest rate in more than 55 years. And the support is only likely to grow as Millennial and Gen Z workers become a greater proportion of the workforce. Both have the highest rates of union support of all generations and Gen Z workers support unions more today than previous generations did at their age. This has played out in recent organizing with many of the highest-profile union drives being led by Gen Z or Millennial organizers.

Third, labor is getting more organized with greater political support. The Biden administration is decidedly pro-union with proposed legislation and regulations that support organizers. This includes a more union-friendly NLRB, the Protecting the Right to Organize Act, changes to joint employer rules at the Department of Labor ([more on that here](#)), and a more active NLRB General Counsel, among others.

Meanwhile, organizers are becoming more effective. From October to March of this year, election petitions increased 57 percent over the same period last year. And unions are winning significantly more often. From January to July of this year, there were 826 union elections with 70 percent being successful, according to the NLRB.

What does this mean for employers? Companies facing increased union activity or new election petitions must take precautions to ensure they are acting within the law. For employers who have never dealt with union concerns, there are practices and potential pitfalls they must learn, and consulting with counsel is always a best practice. To learn more about the post-pandemic union surge, watch our recent webinar [here](#).