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EMPLOYMENT LAWSCENE ALERT: UNION ORGANIZATION IS ON THE RISE

Recently, it seems like the stars have aligned in favor of unions. When President Biden was elected in 2020, a part of his workplace initiatives included the promotion of collective bargaining and the protection of employees' rights to join and form unions. Then, a global pandemic struck, which made many employees reconsider and question their relationships with their workplaces and employers. In February 2022, the White House Task Force on Worker Organization and Empowerment released a report promoting the Biden Administration's support for worker organization and collective bargaining by recommending, among other things, that the federal government use its "authority to support worker empowerment by providing information, improving transparency, and making sure existing pro-worker services are delivered in a timely and helpful manner." Earlier this month, the National Labor Relations Board (NLRB) announced that union representation petitions filed with the Board between October 1, 2021 and March 31, 2022, had increased 57% over the prior six-month period. Additionally, unions have made major headlines recently with successful union elections at an Amazon fulfillment center on Long Island and multiple Starbucks locations.

And more changes are likely on the horizon. For example, on April 7, the NLRB General Counsel issued a memo challenging employers' well-established free speech rights, which are protected pursuant to Section 8(c) of the National Labor Relations Act (NLRA). The General Counsel's memo announced that she will ask the Board to find that mandatory employee meetings, held by employers to express their opinions on union organizing, violate employees' Section 7 rights under the NLRA. If the Board takes this position, it would be a huge blow to employers' ability to effectively and freely communicate with their employees and would also be contrary to U.S. Supreme Court precedent recognizing employers' free speech rights in the workplace.

So, what's an employer to do? Employers cannot threaten employees, cannot interrogate them about their support of a union, cannot promise things to influence the union vote, and cannot surveil employees. However, to lawfully counter a union's organizational activities, employers can help ensure that employees are accurately informed about the effects of unionization to allow employees to make free and clear decisions without coercion about their rights under Section 7. To do so, employers should make sure that their supervisors are properly trained on how to recognize the signs of union organizing activities and how to

lawfully respond to employees' questions and concerns about unionization.

As always, the labor and employment law team at O'Neil Cannon is here for employers to answer questions and address labor and employment law concerns. We encourage you to reach out with any questions, concerns, or legal issues you may have.