

## Prices Keep Rising: Labor Board Significantly Expands Remedies Available To Employees

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In yet another landmark [decision](#) this week, the National Labor Relations Board (NLRB) adopted consequential damages into its suite of possible remedies to be used in unfair labor practice pending before the agency. This ruling not only takes damages awards beyond the traditional back-pay remedy, but to new reaches – and it is unclear just how far the NLRB may actually go.

In *Thryv, Inc.*, the NLRB held that the traditional “make-whole” remedy under Section 10(c) of the National Labor Relations Act captures all “direct or foreseeable pecuniary harms” an employee might have suffered because of an unfair labor practice. As a source of authority, the board pointed to numerous decisions in which it had awarded damages for “harms that were either a direct, or an indirect but foreseeable, consequence of a respondent’s unfair labor practice.” It referenced damages for travel to obtain new employment; legal fees following an arrest; new clothes following a dirtier job assignment; new tools damaged by an employer’s actions; missed retirement contributions and the investment growth and interest such amounts would have accrued; and healthcare expenses incurred following a lapse of health insurance following termination.

In its decision and the resulting broad parameters, the NLRB made clear this remedy will not be reserved for only egregious cases, but instead will be applied generally across the board. Much [like back-pay damages](#), the NLRB general counsel will be required to establish the 1) amount of harm alleged, 2) that it was directly caused by the unfair labor practice and 3) that it was foreseeable at the time of the unfair labor practice. Once established, the employer may challenge each of these elements to defeat the award of such damages.

The consequential damages adoption is not a surprise given recent developments at the agency. NLRB General Counsel Jennifer Abruzzo expressly included the expansion of “make-whole” remedies as an agenda item in her in August 2021 [Mandatory Submissions to Advice Memorandum](#). And, concerning the case at hand, the board [solicited input](#) on expanding consequential damages by inviting parties and other interested stakeholders to submit briefs on the topic in November 2021.

So, with this decision now on the books, the real question becomes “how far will the NLRB go?”

This greatly expanded scope of damages and the practical effects of this decision on proceedings dramatically raises the stakes for employers when charges are filed against them with the NLRB. As this new standard of damages starts to play out, employers should continue to be diligent in terms of their labor relations and mindful of the impact of this decision.

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