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Top Five Labor Law Developments for March 2025

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1. *The National Labor Relations Board once again lacks a quorum to issue decisions.* The U.S. Court of Appeals for the D.C. Circuit granted the Trump Administration's emergency request to stay a lower court's decision reinstating Board Member Gwynne Wilcox. *Wilcox v. Trump, et al.,* No. 25-5057 (D.C. Cir. Mar. 28, 2025). In a 2-1 decision, the court majority ruled the Trump Administration is likely to demonstrate that President Donald Trump had authority to terminate Wilcox, finding the U.S. Supreme Court's decision in *Seila Law,* 591 U.S. 197 (2020), controlling. The court explained that while *Humphrey's Executor,* 295 U.S. 602 (1935), upheld the constitutionality of for-cause removal protections for federal agency leaders, *Seila Law* subsequently narrowed that decision as applying only to multimember agencies that "do not wield substantial executive power," and thus is inapplicable to the Board. Wilcox filed a petition for en banc review of the panel's decision.

2. *President Trump nominated management-side attorney Crystal Carey as the next Board general counsel (GC).* If confirmed by the Senate, Carey will serve as the head of the Board's prosecutorial arm. A former Board attorney, Carey is expected to reverse many of the pro-labor initiatives set by her predecessor, Jennifer Abruzzo. While the GC's office cannot effectuate changes in Board policy unilaterally, the GC can advance cases and arguments that give the Board opportunities to change the law and return to more employer-friendly standards. Interim GC William Cohen has already withdrawn several exceptions to administrative law judges' decisions filed under Abruzzo's tenure that sought precedent shifts. He also withdrew various GC memoranda that sought test cases to pursue such precedent shifts.

3. *President Trump's executive order (EO) targeting the Federal Mediation and Conciliation Service (FMCS) limits the use of federal mediators to resolve labor disputes and prevent work stoppages.* The EO sought to reduce and eliminate certain federal agencies' staffing levels to the maximum extent allowed by law. Historically, FMCS has played an essential role between employers and unions, providing mediation services to prevent and resolve labor disputes,

including impending or ongoing work stoppages and contentious collective bargaining negotiations. Two weeks after the EO, FMCS placed nearly all staff on administrative leave to comply with the directive. FMCS's dismantling could lead to an increase in strikes and labor disruptions and prolong collective bargaining negotiations.

4. *President Trump issued an EO exempting certain federal agencies and subdivisions from collective bargaining.* Pursuant to the EO, covered agencies (including the Department of Defense, Department of Justice, and the Department of State) are no longer required to engage in collective bargaining with unions. Further, subsequently issued guidance generally limits performance improvement plans to 30 days and requires the covered agencies and subdivisions to revert their discipline and performance policies to those established during the first Trump Administration. The guidance explains that the EO aims to strengthen performance accountability in the federal workforce and reduce procedural impediments to separating poor performers who may be protected by collective bargaining agreements.

5. *The U.S. Chamber of Commerce and other business groups are urging the U.S. Court of Appeals for the Eleventh Circuit to find the Board's order banning captive audience meetings violates the First Amendment.* No. 24-13819 (11th Cir. Mar. 19, 2025). The case stems from a Board decision that prohibited employers from holding mandatory employee meetings to advocate against unionizing, overturning longstanding precedent, and marking a pivotal shift in how employers can communicate with their employees about unionization. In a joint brief, the group asserts the ban on captive audience meetings is content and viewpoint discriminatory and unlawfully regulates employers' free speech rights. Eleven states have enacted laws containing restrictions on such meetings: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Minnesota, New York, Oregon, Vermont, and Washington. Many believe such state laws are preempted by the National Labor Relations Act.

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