

# Labor & Employment Issues In Focus

Pitta LLP  
For Clients and Friends  
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## **NLRB AND OSHA TEAM UP TO ENFORCE HEALTH AND SAFETY PROTECTIONS FOR WORKERS**

On October 31, 2023, the National Labor Relations Board (“NLRB”) General Counsel and the Assistant Secretary of Labor for the Occupational Safety and Health Administration (“OSHA”) executed a [Memorandum of Understanding](#) (“MOU”) strengthening the two agencies’ partnership to promote health and safety in the workplace.

The National Labor Relations Act protects employees’ rights to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. The Occupational Safety and Health Act of 1970 regulates working conditions to assure a safe and healthy workplace, and OSHA has the responsibility to investigate and enforce whistleblower statutes. According to the MOU, many employee safety and health provisions are protected by both Acts. The MOU establishes a process for information sharing and referrals, training, and outreach between the NLRB and OSHA.

Under the MOU, the agencies may share any information that supports each agency’s mission. OSHA, when encountering potential victims of unfair labor practices, will direct such workers to the NLRB. Further, since OSHA’s time limit to file a complaint for interfering with OSHA rights is 30 days, OSHA will direct workers to the NLRB, which has a 6-month time limit, to file charges after 30 days. The NLRB in turn will contact OSHA when it encounters workers exposed to health or safety hazards.

OSHA and NLRB also agreed to coordinate investigations and enforcement actions as well as train each other’s personnel on the protections afforded to workers under their respective Acts. Additionally, the agencies will work with their state-level counterparts to implement the MOU’s agreements.

## **PHARMACY WORKERS STAGE THREE-DAY WALKOUT TO DRAW ATTENTION TO UNSAFE STAFFING SHORTAGES**

The year 2023 has seen dozens of unions deploy their primary economic weapon – work stoppages – across different industries from entertainment to auto manufacturing to health care. But what happens when workers who are largely unrepresented by a union decide to engage in this type of concerted activity? Pharmacists and pharmacy technicians are poised to find out. They staged a three-day walkout from October 30 to November 1, 2023 to protest gross understaffing that they say inhibits their abilities to safely and timely connect patients with prescription drugs. Most of the walkouts are

occurring in CVS, Walgreens, and Rite Aid stores nationwide. However, the number of employees actually engaging in the walkouts is difficult to determine, in part because many pharmacy staff are unrepresented by unions.

As is the case with other recent work stoppages, the pharmacy walkout is in response to deteriorating work conditions that were likely exacerbated by the pandemic, during which pharmacists were administering COVID-19 tests as well as vaccinations in addition to their regular pharmacist duties of filling and verifying prescriptions, answering patient questions in person and on the phone, and dealing with insurance companies and doctors. They say this compounding of duties can lead to mistakes, which can have devastating effects on patients. According to the Food and Drug Administration, [more than 100,000 medication errors](#) are voluntarily reported to them each year. The National Library of Medicine reports that [between 7,000 and 9,000 people in the United States die](#) as a result of medication errors each year.

Section 7 of the National Labor Relations Act (“NLRA” or “Act”) protects employees’ right to “right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” “Self-organization” can occur with or without official union support. So long as activities are “concerted,” meaning they involve more than one employee, and are aimed at improving working conditions (for “mutual aid or protection”), they are protected under the Act. However, having the backing of a Union helps. While putting pressure on drug store chains to hire more workers and improve working conditions is the primary goal of the walkouts, organizers of the pharmacy walkouts have said unionizing pharmacy workers is another objective. The workers are reportedly in talks with IAM Healthcare and the United Food and Commercial Workers International Union, but no concrete agreements have been reached.

### **THE WHITE HOUSE’S EXECUTIVE ORDER ON ARTIFICIAL INTELLIGENCE**

On October 30, 2023, the White House unveiled the first-ever Executive Order (“EO”) on artificial intelligence (“AI”), which has sent ripples throughout the tech and employment sectors. This groundbreaking directive not only sets the tone for the future of AI in the U.S. but also provides crucial guidelines for employers navigating the AI landscape. As the White House explained in a press release, the “EO establishes new standards for AI safety and security, protects Americans’ privacy, [and] advances equity and civil rights ...”

The EO emphasizes the potential risks of AI in exacerbating already troubling discrimination. As President Biden explained, “AI is all around us... it presents both opportunities and risks.” To that end, the EO directive to agencies includes for them to address potential civil-rights harms arising from AI use. As stated by the U.S. Equal Employment Opportunity Commission in their 2023 Strategic Enforcement Plan, there’s

a focus on discriminatory recruitment and hiring practices, especially with the use of AI. The EO also underscores the Biden Administration's commitment to labor issues. It cautions against AI deployments that might undermine rights or worsen job quality or "encourage undue worker surveillance." The emphasis is on ensuring AI improves workers' lives. The EO directs the U.S. Secretary of Labor to provide guidance to federal contractors on non-discrimination in hiring involving AI. This is a clear indication that even the most advanced hiring technologies will be under scrutiny.

The way federal agencies approach AI risk will undoubtedly influence private companies. The EO's directive for agencies to appoint a "Chief Artificial Intelligence Officer" and its balanced approach to the use of generative AI within the federal workforce provides a blueprint for private-sector employers. Further, the EO's emphasis on "red teaming," or adversarial testing of AI systems is a wake-up call for employers. This method, which includes tests for potentially discriminatory output from an AI system, will be crucial for all AI applications.

Given the Executive Order's breadth and depth, employers must be proactive. Regular audits of AI systems, collaborations with AI vendors, and a commitment to transparency are essential. As AI becomes more integrated into workplaces, employers must ensure they're not inadvertently introducing or perpetuating biases. For employers of union employees, they should consider whether the incorporation of such technology triggers attendant bargaining obligations under federal, state, and local bargaining laws. Moreover, with the EO's emphasis on worker protections, employers must be ready to address AI's challenges. This includes training initiatives and fostering a culture of continuous learning for employees.

The EO is a significant milestone in the Biden Administration's approach to AI regulation. It offers a roadmap for federal agencies and valuable insights for employers. As Dr. Kate Crawford, a leading AI researcher, once said, "AI is neither artificial nor intelligent. It is made from natural resources and it is people who are performing the tasks to make the systems run." Employers must remember the human element in AI and prioritize transparency, accountability, and worker protections. As AI continues to evolve, staying informed and engaged is crucial for employers navigating this transformative technology.

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