



LABOR & EMPLOYMENT ISSUES

IN FOCUS

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LABOR BOARD SUES CALIFORNIA OVER LAW EXPANDING STATE LABOR AGENCY'S JURISDICTION

On October 15, 2025, the National Labor Relations Board (“NLRB” or “Board”) filed suit against the state of California alleging that a new state law is preempted by the National Labor Relations Act (“NLRA”). The complaint comes exactly one month after the Board filed a lawsuit against New York challenging a similar law, also on preemption grounds. Both statutes aim to give the states increased jurisdiction over labor matters in an attempt to fill the gap left by the NLRB’s current ineffectiveness due to a lack of a quorum. As in the suit challenging the New York statute, the NLRB argues that this encroachment on cases that would generally fall under the Board’s jurisdiction constitutes preemption.

The California law, AB 288, provides that the state’s Public Employment Relations Board (“PERB”) may have jurisdiction over private employers and their employees “if [a] worker is employed in a position that is, or would have been, subject to the National Labor Relations Act as of January 1, 2025, but they lose coverage under the National Labor Relations Act because the National Labor Relations Act is repealed, narrowed, or its enforcement enjoined” or if the NLRB has ceded jurisdiction over the matter. The statute specifies that the Board would be deemed to have ceded jurisdiction over pending election results and challenges “when there is a lack of a quorum of the National Labor Relations Board, or when the National Labor Relations Board has lost its independence as a result of the Supreme Court finding that National Labor Relations Board members are unconstitutionally protected from removal or when the continued processing of a case is enjoined by a court due to constitutional challenges to the board’s structure or authority.” The statute also states that the Board will be found to have ceded jurisdiction over non-election matters when there are delays in processing cases for more than six months.

These provisions directly address the current state of the Board and the many challenges the Trump administration has raised against the administrative state in general, including his contested removal of Board Chair Gwynne Wilcox in January.

The case is *Nat’l Labor Relations Bd. v. State of Calif.*, E.D. Cal., No. 2:25-at-01400, 10/15/25.

UNITED STATES DEPARTMENT OF LABOR ISSUES FOUR NEW OPINION LETTERS CONTINUING REINTERPRETATION OF LABOR LAW

On September 30, 2025, the U.S. Department of Labor's Wage and Hour Division announced four opinion letters designed to "promote clarity, consistency, and transparency in the application of federal labor standards," according to the government.

The opinion letters provide official written interpretations from the division which address questions often raised by the public about how laws should be applied in specific, fairly common factual circumstances.

The opinion letters are:

- [FLSA2025-03](#): Addressing whether a restaurant employer may include "front-of-house" oyster shuckers in a traditional tip pool with servers for whom the employer takes a tip credit under section 3(m)(2)(A) of the FLSA.
- [FLSA2025-04](#): Addressing whether "emergency pay" provided to firefighters and other employees of a city must be included in the regular rate of pay used to calculate overtime premiums under section 7(e) of the FLSA, and, if so, how to calculate the regular rate when such pay is included.
- [FLSA2025-05](#): Addressing whether two entities that are physically connected, and whose ownership, management, and operations appear common, are jointly and severally liable for all aspects of compliance under the FLSA.
- [FMLA2025-02-A](#): Addressing how to calculate the number of hours of Family and Medical Leave Act leave available to correctional law enforcement employees who work a fixed "Pitman Schedule" requiring 12-hour shifts over a two-week cycle that includes mandatory overtime.

Contrary to expectations, the opinions were not completely in favor of employers. For example, in the oyster shucking case, the DOL determined that the shuckers were front of house employees who could be considered "tipped employees," thus obviating the need of the employer to pay them a higher wage. Conversely, in the joint employer opinion, the DOL found that a worker who worked at a hotel restaurant and a club operated by the hotel, which were technically separate employers, could combine the hours worked for the purposes of calculating overtime eligibility as the two employers were, in reality, joint.

JUDGE BLOCKS PRESIDENT TRUMP'S SHUTDOWN LAYOFFS

Finding that the layoffs of thousands of employees during the federal government shut down is “unprecedented in our country’s history,” Judge Illston of the U.S. District Court for the Northern District of California stayed multiple federal agencies’ reductions in force (“RIF”) on October 10th. The request for a temporary restraining order (“TRO”) was brought by unions representing federal workers who sued to block the RIFs, alleging the layoffs violate the Administrative Procedure Act (“APA”). The case is *American Federation of Government Employees, AFL CIO et al v. United States Office of Management and Budget et al*, Docket No. 3:25-cv-08302 (N.D. Cal.).

A party is entitled to a TRO where they show they are likely to succeed on the merits of their lawsuit, it is likely the party will suffer irreparable harm in the absence of the TRO, the balance of the equities tips in the party’s favor, and an injunction is in the public interest.

Judge Illston found that a temporary restraining order (“TRO”) is appropriate because the unions “are likely to prevail on the merits of their claims under the APA.” If the union’s allegations that the government is laying off workers who work on programs favored by a political party prove true, Judge Illston found it would be the “the epitome of hasty, arbitrary and capricious decision making.” Moreover, the government’s reasoning that federal programs whose funding lapsed or are otherwise unfunded are no longer statutorily required is faulty as the Office of Management and Budget “essentially seeks to overturn mandates that Congress has put in place.”

As for harm, workers face losing income and healthcare along with potential housing instability. Moreover, due to the shutdown, some employees do not even know they were part of a RIF, as notices were sent to the government issued emails they cannot currently access. As for the balance of equities, “the government does not suffer by a temporary preservation of the status quo.” In terms of the public interest factor, Judge Illston held “there is generally no public interest in the perpetuation of unlawful agency action.”

As such, to preserve the status quo, Judge Illston issued a TRO and ordered dozens of federal agencies to refrain from issuing RIFs.

9/11 Solidarity Network Helps Claimants Obtain Vital Documentation for 9/11 Compensation Fund Claims

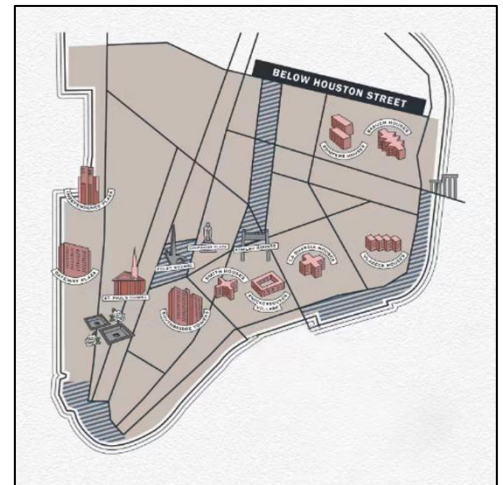
It is becoming increasingly difficult for some claimants to find documents to prove their presence at an eligible location so many years after the attacks. In fact, earlier this year, the New York City Police Department (NYPD) went to the State Legislature for assistance in verifying its members' 9/11 service. On September 10th, Governor Kathy Hochul signed chapter 390 of the Laws of 2025 which establishes a presumption that a New York City Police Pension Fund member participated in the rescue, recovery, and clean-up operations at the World Trade Center, unless their employer proves the contrary by competent evidence.

The 9/11 Victim Compensation Fund (VCF) understands this challenge and encourages individuals who were present in the exposure zone to gather and save their proof of presence documents now, even if they aren't currently ill or planning to file a claim.

To help members of the general public verify their 9/11 service, Pitta LLP's affiliate [Pitta & Baione LLP](#) is developing the 9/11 Solidarity Network, a system where members can act as witnesses for one another in verifying 9/11 service. The network utilizes sworn **Witness Presence Statements** from people who can attest to a claimant's presence which are accepted as secondary evidence by the VCF when primary documentation is unavailable.

By participating, individuals can provide the crucial testimony a fellow member might need while also securing potential support for their own future claims. This initiative formalizes the collective memory of its members to help ensure no one is left to prove their presence alone.

For more information regarding the 9/11 Solidarity Network, please contact Pitta & Baione at 844-901-1262.



9/11 Exposure Zone

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