Labor & Employment Law Daily Wrap Up, STRATEGIC PERSPECTIVES
—Ogletree Deakins’ Practical NLRB Advisor reviews the COVID-19 pandemic’s impact on the NLRA, (Sept. 3, 2020)

Labor & Employment Law Daily Wrap Up

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By Lisa Milam, J.D.

In collaboration with Labor & Employment Law Daily senior analyst Lisa Milam, J.D., attorneys in the Ogletree Deakins Traditional Labor Relations Practice Group address the NLRB’s response to the COVID-19 pandemic.

The coronavirus pandemic has shaken the U.S. workplace in innumerable ways, leaving companies dealing with difficult employee relations issues while simultaneously struggling with the challenges of reopening safely and efficiently in the midst of a sudden, crippling economic downturn. For unionized employers, collective bargaining obligations have added considerably to these complexities.

Brian E. Hayes, C. Thomas Davis, and Ruthie L. Goodboe, chairs of Ogletree Deakins’ Traditional Labor Practice Group, discuss how the National Labor Relations Act (NLRA) affects the current state of affairs for both union and nonunion employers, and answer some of the most pressing questions regarding traditional labor law in the context of the unprecedented health crisis.

Among the topics discussed are:

• Employee rights in a pandemic: What “concerted activities” might employees engage in during a pandemic? Is refusal to work due to COVID-19-related safety fears protected activity, and what can an employer do when employees refuse to work?
• Bargaining during a pandemic: Management rights and the most pressing subjects of bargaining right now, as well as responding to union information requests
• COVID-19’s impact on labor and unfair labor practice charges
• NLRB operations in the pandemic: Hearings, representation elections, temporary notice-posting change, Division of Advice and General Counsel guidance
• Other NLRB developments

This issue of the Ogletree Deakins Practical NLRB Advisor, Summer 2020, provides insights into the pandemic’s effect on labor relations. As Brian Hayes notes, "While businesses shut down, slowed down, or modified their ways of doing things in response to the virus, each of these reactions spawned new, and oftentimes totally unanticipated, labor/management issues. Novel bargaining obligations arose, and new bargaining mechanics became necessary. These unexpected issues, coupled with an increase in employee concerted activity in response to the pandemic, all have tested the capacity of the parties and the law to adapt to unprecedented circumstances."

Attorneys: (Ogletree Deakins).