

NLRB Circuit Breakers

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The National Labor Relations Board ("NLRB") is in transition. There is little doubt that the NLRB of the Obama Administration, which often issued decisions in favor of employee rights and greatly expanded its own jurisdiction, will be transformed once the Trump Administration names new members. Similarly, one can anticipate more conservative federal appeals courts reviewing NLRB decisions. In the interim, assessing the current state of federal labor law will become increasingly challenging.

Two decisions by federal appellate courts last month illustrate the challenge. In one, the First Circuit reversed the NLRB, leaving a fired employee on the outside looking in; meanwhile, on the same day, the Second Circuit affirmed a controversial NLRB ruling which protected a worker who violated a prohibition on recordings in the workplace.

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