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EEOC and NLRB are Not Feeling Trump's Love this Valentine's Day

James B. Yates, Esq., SHRM-SCP and Jade L. Robinson, Esq.

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The Equal Employment Opportunity Commission (“EEOC”) and the National Labor Relations Board (“NLRB”) both currently lack quorum after President Trump fired members of each agency (and the General Counsels). Without quorum, the EEOC and NLRB cannot legally issue decisions impacting the workplace and the employment relationship.

Pursuant to Title VII of the Civil Rights Act of 1964, the EEOC must have three members for a quorum. Without three members, the EEOC cannot take any action that requires a vote prohibiting the agency from issuing new guidance, revoking existing guidance, and initiating certain types of litigation. On January 27, 2025, President Trump fired EEOC Commissioner Jocelyn Samuels, the EEOC Chair Charlotte Burrows, and General Counsel Karla Gilbride. Moving forward, the Senate will likely confirm President Trump’s appointee to fill the open seats. While litigation already filed by the EEOC will likely continue, the EEOC will be unable to pursue new initiatives or officially rescind existing guidance.

Pursuant to the United States Supreme Court’s decision *New Process Steel*, the NLRB must have three members for a quorum. Without three members, the NLRB cannot issue decisions on unfair labor practice cases or hear review of elections cases. On January 27, 2025, President Trump fired NLRB member Gwynne Wilcox and NLRB General Counsel Jennifer Abruzzo. On February 5, 2025, Ms. Wilcox sued the Trump Administration and Marvin Kaplan, the Republican Chair of the NLRB, alleging that her removal violated the National Labor Relations Act (“NLRA”) because the NLRA only permits the President to fire NLRB members “upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.” The lack of quorum will cause cases to sit dormant and may increase back pay awards in wrongful termination cases.

Ultimately, the U.S. Supreme Court will determine whether President Trump possessed the legal authority to remove the agency officials and the limits of quorum-less agency actions. For now, the EEOC and NLRB (and several other agencies controlled by Biden Administration appointees) have been placed in legal limbo.

James Yates is a Member and Jade Robinson is an Associate in Eastman & Smith Ltd.’s Labor and Employment group. They partner with human resource professionals to make workplaces better (and legally compliant). They can be reached at 419-241-6000 or jbyates@eastmansmith.com and jrobinson@eastmansmith.com. This article has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.