

# NLRB Continues to Tease Rule-Making Efforts; Now Focused on Supporting Recent Decisions Regarding Access to Employer Property

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Last week, on November 7 at the American Bar Association's annual labor and employment law conference, the National Labor Relations Board ("NLRB") provided a glimpse into its upcoming intentions when discussing a planned administrative rule addressing access to an employer's property. NLRB member William Emanuel stated that the proposal will "clearly define the right of an employer to prohibit certain activities on its private property by two different categories": non-employee union organizers and regular employees. Emanuel continued that the rule is meant to establish clarity in light of the NLRB's recent decisions on the subject.

This year, the NLRB has issued a number of rulings addressing access to employer's property. In June, the NLRB overturned one long-standing precedent that established three exceptions to the general rule that an employer can restrict nonemployee access to company property and reestablished an older standard that provided only two exceptions (see [summary](#) here). That decision maintained exceptions for when (1) a union has no other reasonable means of communication with the employees and (2) an employer discriminatorily bars access of a union but not other third parties. June's decision eliminated a third exception that prohibited an employer from preventing nonemployee access to a public space within the employer's property.

In August, the NLRB continued clarifying its position regarding nonemployee access to employer property when it found that independent contractors did not receive the same access rights as employees (see [summary](#) here). In this decision, the NLRB held that contractor employees do not receive the same Section 7 access rights as the property owner's employees. Instead, a property owner may exclude off-duty employees of a contractor seeking to engage in Section 7 rights unless (1) the contractor employees work both regularly and exclusively at the property and (2) the property owner fails to show that they have one or more reasonable nontrespassory alternative means to communicate with their target audience.

Finally, the NLRB issued a third decision in September restricting nonemployee access to company property to protest against an employer even where non-protest third-party activity, such as solicitations for charitable donations or civic groups, is otherwise permissible (see [summary](#) here). Similar to its other decisions, this decision overturned NLRB precedent and returned the NLRB to an older standard. This decision focused on the disparate reasons for the permitted and prohibited third party activities.

A proposed rule has not yet been released. Please stay tuned for future updates as this issue develops.

For more information, contact a member of the firm's Labor & Employment Practice Group.

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