

National Labor Relations Board Adds New Financial Remedy for Labor Law Violations

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The [National Labor Relations Board \(NLRB\)](#) has decreed that victims of unfair labor law practices are entitled to compensation for "all direct or foreseeable" harms-not just pay back. The 3-2 decision, *Thryv Inc. and International Brotherhood of Electrical Workers, Local 1269*, expands the definition of "make-whole relief" to include medical expenses due because of loss of insurance, fees for late rent or credit card payments, penalties for early withdrawal from a retirement account, and any other damages that have resulted from the labor law violation.

Under Supreme Court precedent, the NLRB has no power to impose penalties for unfair labor practices, limiting financial awards to amounts that make victims "whole." In cases involving a wrongful termination of employment, this has limited a wrongdoer's financial exposure to back pay that the victim would have earned had they remained employed. The *Thryv* case eliminates that limitation to include what are commonly thought of as "consequential damages," with the majority pointing out that "[t]he underlying policy of [the Act's remedies provision] is a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination."

The two dissenting board members argue that the "direct and foreseeable" standard imposed by the board will be "difficult to apply and result in bitterly disputed awards." Indeed, in a recent case cited by the dissent, involving a settlement agreement that included "consequential damages," an initial calculation of \$13.3 million was eventually reduced to \$435,000 after vehement argument and complaint from the alleged violator. The dissenters also argue that the Board's decision goes beyond its statutory and constitutional authority, suggesting that the issue may be taken up by the courts in the future.

The *Thryv* decision is just the latest in a series of pro-employee decisions issued by the NLRB, following a change in the composition of the board that always comes with a change in administrations. Employers should consider this increased financial exposure when contemplating taking adverse action during a union organizing campaign or otherwise engaging in conduct that appears likely to lead to an unfair labor practice. And once a charge is filed, employers would be well advised to get to a decision or resolution quickly to avoid increased consequential damages stemming from delay.

The *Thryv* decision can be found here:

<https://www.nlr.gov/cases-decisions/decisions/board-decisions>

If you have questions about the NLRB precedent or how it could affect a business acquisition, please reach

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