

As Legislation Stalls, Tribes Remain Under National Labor Relations Act: What Should Tribal Employers Do Next?



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Thursday, January 11, 2018

Despite hopeful signs in early 2017, a proposed federal law to exempt Indian tribes and tribal employers from the National Labor Relations Act (NLRA) has failed to progress beyond the most introductory legislative stages as of the date of this post. Tribal employers must prepare for the possibility that, like its several predecessors, the Tribal Labor Sovereignty Act of 2017 will not be enacted into law before the end of the legislative session.

The Tribal Labor Sovereignty Act (TLSA), if passed, would recognize a similar level of sovereignty among Indian tribes as is afforded to state and local governments under the NLRA. The Act would exclude “any Indian tribe, or any enterprise or institution owned and operated by an Indian tribe and located on its Indian land” from the definition of “Employer” under the NLRA. The TLSA would not preclude unions in Indian Country, but would reserve to the tribes, rather than the federal government, the authority to regulate issues of unionization within their tribes. Efforts to enact such legislation began in 2004, when the National Labor Relations Act ruled that tribal employers were subject to the Act, but bills introduced in several congressional sessions have not progressed to passage.

In January 2017, Senator Jerry Moran (R-Kansas) reintroduced the TLSA for consideration in the current legislative session. The bill was placed on the legislative calendar in February 2017. In the summer of 2017, sources reported hopefulness that the Senate votes needed for passage were within close reach. However, the illness and absence of Senator John McCain (R-Arizona), who is counted as an important presumed supporter of the bill, is viewed as a potentially significant setback, and no further progress appears to have been made on the bill since it was placed on the legislative calendar. Absent further action in 2018, efforts will need to begin anew in the next legislative session with the introduction of a new bill.

What does this mean for tribal employers? Based on National Labor Relations Board and court decisions, tribal employers are subject to the National Labor Relations Act, and will continue to be so absent further legislative or court action. It is critical that tribes understand what is permitted and what is prohibited by the Act in order to avoid costly legal action and penalties in the event of union organizing. Tribal employers should consult their legal counsel to define their positions on unionization, develop lawful strategies for responding in the event of union organizing activity, and train their supervisors to ensure compliance with the law.

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