



## A Fox Rothschild Podcast

### Labor Law Lineup

#### Episode 11: Federal Preemption: State-Level Challenges to the NLRA

*Featuring Mark Eskenazi and Katherine Cohodes of Fox Rothschild*

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**Mark:** Welcome to "Labor Law Lineup." I'm Mark Eskenazi.

**Katie:** And I'm Katie Cohodes.

**Mark:** We're labor and employment attorneys at Fox Rothschild breaking down how the current state of labor law affects your workplace.

**Katie:** Mark draws on deep experience shaping federal labor policy at both the White House and the National Labor Relations Board.

**Mark:** Katie offers sharp insight as former in-house counsel who's dealt firsthand with a broad range of workplace challenges.

Together, we break down labor law news for people leaders.

**Katie:** And we promise to keep it brief, because we know your time is valuable and your inbox is full.

**Mark:** Please reach out if you're a client of Fox Rothschild or a listener who wants to continue the conversation on anything we cover.

Welcome back to "Labor Law Lineup." We recorded this on February 20.

Today we're covering important legal battles playing out in New York and California that could change how federal and state labor laws work together.

**Katie:** Yep. Both New York and California have passed new laws that impose additional requirements on employers, and could lead to greater damages and more burdensome compliance.

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**Mark:** These laws, in effect, permit state authorities to enforce the NLRA. These disputes, of course, are normally handled by the NLRB.

**Katie:** So let's talk about their reasoning.

**Mark:** The states claim that the NLRB wasn't able to do its work properly in 2025 without a quorum, leaving workers unprotected, so that the states decided this justified state intervention. Of course, as of early January 2026, the board has regained a quorum.

**Katie:** Right, and both laws seized on the board's inability to issue decisions by expanding the jurisdiction of their state's public Employment Relations Board to cover private-sector employees usually subject to the NLRA. But here's the thing: Generally, states aren't allowed to create their own labor rules for private-sector employers. That's because the Supreme Court has said, states may not regulate activity that the NLRA arguably protects or prohibits. Instead, the board regulates these activities.

**Mark:** So naturally, the NLRB and an employer have sued, arguing these state laws are preempted by federal law. These cases are working through the courts as we speak.

What's notable is that a federal court in New York rejected the state's "unique circumstance" arguments, essentially that the NLRB's quorum issues and uncertainty about board members' job protections justified state intervention. The court said that Supreme Court precedent recognizes no such exception, and Congress actually anticipated that there would be occasional quorum lapses at the board. And just before the new year, we got a similar ruling on the west coast.

**Katie:** A California Federal District Court partially blocked a law, which was set to take effect January 1, which would've given their public board the ability to regulate private sector labor relations and given it the ability to ignore NLRB precedent. The court reasoned that the NLRA anticipates that the board might lose a quorum, which --along with processing delays --has happened before. And the court said that despite all of this, the board retains its authority to administer the NLRA.

**Mark:** What does this all mean for HR leaders? For now, if you're operating in these states, you're still dealing with one set of rules: federal labor law enforced by the NLRB. The state agencies cannot step in.

**Katie:** Though these are appealable decisions since the board now has a quorum, we may be seeing an end to the state's attempts to regulate private sector labor relations.

**Mark:** But if a state agency sends you anything about NLRA related activity, call your labor counsel right away as these turf wars play out. Thanks for listening.

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