



→ John S. Bolesta

Special Counsel

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John Bolesta is special counsel in the Labor and Employment Practice Group in the firm's Washington, D.C. office.

Areas of Practice

John represents management in labor and employment litigation matters. He represents clients in numerous industries during union organizing attempts and litigation before the National Labor Relations Board, contract negotiation and labor arbitrations. Additionally, he advises clients on best practices in employee relations and the development of comprehensive labor strategies to preserve the ability to maintain direct relationships with employees.

John counsels clients on all aspects of federal, state and local equal employment opportunity and fair employment practices laws and regulations, and he regularly advises clients on confidentiality, trade secrets, non-solicitation and non-compete matters. Moreover, he represents clients in whistleblower matters under a broad range of statutes, including the Occupational Safety and Health Act, the Surface Transportation Assistance Act, the Toxic Substances Control Act and the Clean Air Act. His experience ranges from conducting investigations and developing position statements to litigating whistleblower cases before administrative law judges and in court.

John develops and presents to employer and other groups on topics related to labor and employment law, including maintaining a union-free environment, privacy in the workplace, sexual harassment, occupational safety and health, implementation of substance abuse policies and discrimination in the workplace. Further, he is routinely called upon to draft employment policies, handbooks and employment-related contracts. In addition to his labor and employment experience, he also assists clients extensively in commercial litigation disputes.

Honors

Washington, D.C. Super Lawyer, *Super Lawyers*, 2018-2021

Washington, D.C. Rising Star, *Super Lawyers*, 2014-2015

Articles

- NLRB Memo May Void Some Union-Employer Neutrality Pacts
Law360, 09.23.2020

- Expect More Pro-Business Rulings From NLRB This Year
Law360, 01.27.2020
- New NLRB Election Rules Re-Level The Field For Employers
Law360, 12.13.2019
- Classification Ruling Exhibits NLRB's Stance On Contractors
Law360, 09.19.2019
- NLRB Ruling Clarifies Class Waivers For Employers
Law360, 08.26.2019
- Orchestra Musicians Ruled Employees Despite Independent Contractor Agreements
Society for Human Resource Management, 05.25.2016
- Statements About Older Workers Evidence of Discriminatory Intent
Society for Human Resource Management, 07.02.2014

Books

- Contributing Editor, Chapter Seven, *The Developing Labor Law*, Seventh Edition

Labor and Employment Law Blog Posts

- "NLRB General Counsel Issues New Memo Further Expanding Penalties for Unfair Labor Practice Violations," April 19, 2024
- "Judge Issues First Post-Cemex Bargaining Order Despite Employer Winning Union Election," October 20, 2023
- "Pair of Board Decisions Significantly Limit Employers' Power to Act Unilaterally and Past Practice Defense," September 13, 2023
- "NLRB Expands Scope of What Is Considered Protected Concerted Activity in Workplaces," September 6, 2023
- "Newly Created NLRB Rules Drastically Change the Process for Unions Seeking Recognition of Most Private Sector Employees in the U.S. and Substantially Limits Employee Voting in Secret-Ballot Election," August 30, 2023
- "NLRB Adopts Volatile New Standard for Evaluating Work Rules," August 4, 2023
- "SCOTUS Issues Decision Allowing State Court Lawsuit Against Union for Property Damage Caused During Labor Dispute," June 19, 2023
- "NLRB Overturns Standard for Independent Contractor Status Under the NLRA," June 15, 2023
- "NLRB General Counsel Announces Employee Non-Compete Agreements Violate the NLRA," June 12, 2023
- "Back to Normal, Almost – NLRB General Counsel Issues Updated Guidance on Suggested Manual Election Protocols and Push for Manual Elections by the NLRB," June 7, 2023
- "...But Words Will Never Harm Us? The NLRB Restores Precedent Protecting Abusive Workplace Speech by Employees While They Are Engaged in Protected Concerted and Union Activities," May 12, 2023
- "NLRB General Counsel Issues Memo Updating Prosecutorial Priorities," May 3, 2023

- "NLRB General Counsel Releases Memo Concerning Confidentiality and Non-Disparagement Clauses in Severance Agreements Post-McLaren," March 23, 2023
- "We Can Now Add Civility and Secrecy to the List of Things Money Can't Buy: NLRB Rules Non-Disparagement and Confidentiality Clauses in Severance Agreements Unlawfully Restrain and Coerce Employees," February 23, 2023
- "SCOTUS Hears Oral Argument on Whether NLRA Preempts State Court Lawsuits Against Unions for Property Damage Caused During Labor Disputes," January 20, 2023
- "NLRB Provides Off-Duty Contractor Employees With Property Access to Engage in Section 7 Activity," January 4, 2023
- "NLRB Confirms a Return to Union Gerrymandered Bargaining Units," December 16, 2022
- "Caught on Video No More? NLRB General Counsel Releases Memo Urging Board to Curtail Employer Use of a Variety of Surveillance Technologies in Workplace," November 7, 2022
- "NLRB Revisits Union Dues Checkoff Rule," October 10, 2022
- "NLRB Releases Proposed Joint Employer Rule Rolling Back Trump-Era Standard," September 6, 2022
- "Union Election Petitions on the Rise, Total Number of FY21 Petitions Eclipses in First Three Quarters of FY22," July, 15, 2022
- "NLRB General Counsel Seeks to Reinstate Radical Standard for Union Recognition and Restrict Employer Free Speech During Corporate Organizing Campaigns," April 18, 2022
- "NLRB General Counsel Will Ask the Board to Find That Captive Audience Meetings Violate the NLRA," April 8, 2022
- "NLRB to Decide Whether Misclassification Is Standalone Violation of the NLRA," March 31, 2022
- "NLRB General Counsel Issues Memorandum on Increased Inter-Agency Coordination, Collaboration," February 11, 2022
- "NLRB Rings in the New Year by Inviting Briefing on Multiple, Far-Reaching Standards Impacting Employers," January 19, 2022
- "NLRB Foreshadows a Return to Union Gerrymandered Bargaining Units," December 28, 2021
- "NLRB General Counsel Issues Memos Calling for New Harsher Penalties for Unfair Labor Practice Violations," September 22, 2021
- "NLRB General Counsel Sets an Agenda to Reverse Trump-Era Board Policy," August 19, 2021
- "Scabby Survives Another Trip to the NLRB: Board Reaffirms Rat-and-Banner Displays Targeting Neutral Businesses Are Permissible," July 26, 2021
- "New Administration, New Direction as Acting NLRB General Counsel Rescinds 10 General Counsel Memos and Reverses Course on Neutrality Pacts With Unions," February 3, 2021
- "NLRB's Division of Advice Determines Certain Workers in the Cannabis Industry Are Exempt From Federal Labor Law," January 29, 2021
- "SCOTUS to Consider Whether California Unconstitutionally "Takes" Private Property When It Compels Employers to Grant Union Access to Private Property," November 16, 2020

- "GC Finds Merit in COVID-19 Related ULP Cases in GC Memo 20-14," September 22, 2020
- "Neutrality and Labor Peace Agreements – When Its Unlawful for an Employer to Be "Too Neutral" as to Union Organizing Under the NLRA," September 16, 2020
- "The Board Weighs In on the COVID Mail Ballot Controversy," September 1, 2020
- "NLRB Releases More Employer-Friendly COVID Advice," August 31, 2020
- "Board Announces Intent to Issue New Rules Eliminating Disclosure of Certain Personal Information and Requiring Absentee Ballots for Those on Military Leave," July 29, 2020
- "Sticks and Stones...The NLRB Rethinks Its Position on Abusive Workplace Speech by Employees While They Are Engaged in Protected Concerted and Union Activities," July 23, 2020
- "NLRA "Advice" All Employers Should Consider in a COVID World," July 23, 2020
- "AFL-CIO Sues the Board Over New Rules – AGAIN," July 17, 2020
- "Will the NLRB GC's "Suggested" Manual Election Protocols Matter?," July 10, 2020
- "Board Invites Briefs and Signals a Possible Shift in Its Contract Bar Rules," July 10, 2020
- "Judge Jackson Explains the Basis for Her Invalidation of the Board's Election Regulations," June 19, 2020
- "The NLRB Reacts to Court's Eleventh-Hour Partial Injunction of the Agency's New Election Rules," June 2, 2020
- "Why, How and When Katz May "Trump" an Expired CBA When It Comes to Making Unilateral Changes – The Relationship Between *MV Transportation* and *Raytheon Network*," April 23, 2020
- "Keep a Lid on It – The Trump NLRB Reaffirms Employer Ability to Enforce Investigative Confidentiality Rules," April 22, 2020
- "NLRB Reinstates Broad Deferral of Discrimination Cases to Arbitration, Overruling the Obama Board's 2014 Decision in *Babcock & Wilcox*," January 2, 2020
- "Employers May Now Forbid Employees Using Co. Email for Protected Concerted Activities, Forbid Employees from Discussing On-Going Workplace Investigations, and Cease Checking Off Union Dues," December 20, 2019
- "Christmas Comes Early for Employers at the NLRB – New Election Procedures That Give Employers a Greater Opportunity to Mount Legal Challenges to Election Petitions and to Effectively Campaign Against Unionization," December 13, 2019
- "An Employer's Bargaining Table Complaints as to Poor Business Conditions Is Not a Claim of Poverty Entitling a Union to Business Sensitive Information," September 16, 2019
- "More Good News From The Board: NLRB Scraps The Clear And Unmistakable Waiver Standard For The Contract Coverage Test When Deciding Unilateral Change Cases," September 11, 2019
- "Employers May Not Have To Retain Racists, Sexists And Belligerently Disobedient Employees After All-The NLRB Appears Ready To Rethink Its Positions On Controversial Discipline-Related Doctrines," September 11, 2019
- "The NLRB Nixes Union Gerrymandering And Establishes A Three Step Test For Voting Unit Determinations," September 11, 2019
- "The NLRB Rules That Employers May Bar Union Representatives From Their Property Even Though They Have Allowed Other Third Parties To Engage In Civic, Charitable Or Commercial Solicitations There," September 10, 2019

- "An Employer's Erroneous Announcement To Employees Declaring Them Independent Contractors Does Not, Standing Alone, Violate The NLRA," September 5, 2019
- "The NLRB Holds That Employers May Implement Class Waivers in Response to Class Claims and Discipline Employees Who Refuse to Sign Them," August 15, 2019
- "Breaking with Tradition, The Current NLRB is on a Rulemaking Tear: Election Procedures, Recognition Bar, and 9(a) Collective Bargaining Relationships," August 13, 2019
- "The NLRB Confirms that Intermittent Strikes in Furtherance of the Same Goal are Unprotected," August 1, 2019
- "The NLRB Just Made It A Little Easier For Employees To Get Rid Of Their Union," July 16, 2019
- "Which Are They? Independent Contractors Or Employees? Navigating The Conflicts Between State And Federal Law," July 2, 2019
- "NLRB Limits Duty to Bargain Over Disciplinary Actions," June 28, 2019
- "NLRB Limits Union Access Rights to "Public Spaces" of Employers," June 17, 2019
- "It's OK to Be Different- NLRB Rules That Union Represented Employees Are Not Entitled to Midterm Bargaining Over Same Paid Holiday Granted to Non-Represented Employees," June 6, 2019
- "Supreme Court Rules That Employers Can Be Forced To Defend Against Actions Under Title VII Not Properly Brought Before the EEOC," June 3, 2019
- "No Evidence? No Problem! National Labor Relations Board's General Counsel Memorandum Eases Burden On *Beck* Objectors Following Board's Decision in *Kent Hospital*," May 8, 2019
- "The NLRB Continues To Chip Away At Individual Protected Concerted Activity," April 23, 2019
- "It's Perfectly Clear Once Again— NLRB Limits "Perfectly Clear" Successor Exception," April 9, 2019
- "NLRB's Division of Advice Gives "Advice" As to the Application of *Boeing* – When a Work Rule/Employment Agreement is Facially Valid Under the NLRA in Union and Union Free Workplaces," March 22, 2019
- "I'm Not Paying for That! National Labor Relations Board Increases Rights of *Beck* Objectors and Further Limits the Activities Unions Can Fund Through Dues Collections," March 7, 2019
- "NLRB Issues Proposed Rulemaking on the Joint Employer Standard," September 13, 2018
- "National Labor Relations Board Signals That It May Leave *Purple Communications* Black and Blue," Aug 6, 2018
- "National Labor Relations Board's General Counsel Releases Memorandum Providing Guidance On Handbook Rules After Its December 2017 Boeing Decision," June 25, 2018
- "NLRB Confirms That It Intends To Proceed With Rulemaking On Joint Employer Standard," June 8, 2018
- "National Labor Relations Board Deviates from Typical Practice and Announces that It is Considering Rulemaking to Address Joint Employer Standard," May 23, 2018

Real Estate, Land Use, & Environmental Law Blog Posts

- "Labor Development Impacting Developers, Contractors, and Landowners," May 22, 2019

Media Mentions

Guardians of the Workspace Podcast: Ep. #1 "Unraveling Employee Safety Laws: Essential Insights for Hotel Managers"

WorldSafe, 07.21.2023

Experts Split On Effects Of NLRB Collaboration With FTC

Law360, 07.21.2022

Is the NLRB Embracing Common Sense?

Material Handling & Logistics, 11.25.2019

Maryland Passes Paid-Sick-Leave Law

Society for Human Resource Management, 01.30.2018

Speaking Engagements

"Handling Abusive Workplace Conduct: Setting-Specific Standards Impacting Union and Non-Union Employers,"
Strafford Webinar, August 2, 2023

"Key 2020-21 NLRB Rulings and Reversals Impacting Non-Union and Union Employers," Strafford Webinar,
November 17, 2021

"New NLRB Guidance on Employee Handbooks: Complying With New Rules After the Boeing Decision," Strafford
Webinar, September 5, 2018

Events

Charting the Course: Key Updates in Labor & Employment Law for 2024

04.09.2024

Post-Pandemic workplace/Labor Relations Issues

Sheppard Mullin San Francisco Office, 03.22.2023

CANCELED: Unions Launch New Effort to Organize Game Companies - Are you Ready?

Sheppard Mullin San Francisco, 03.19.2020

A Labor Update from Inside the Beltway: What All Union and Non-Union Employers Need To Know About Recent
NLRB Developments

Labor Update Webinar

Via GlobalMeet, 07.31.2019

New NLRB Guidance on Employee Handbooks: Complying With New Rules After the Boeing Decision

CLE Webinar

09.05.2018

Memberships

Member, Committee on the Development of the Law under the NLRA; and Committee on Practice and Procedure Under the NLRA, American Bar Association

Member, Labor & Employment Law Section; and Membership Committee, Maryland State Bar Association

Member, District of Columbia Bar Association

Practices

Labor and Employment

Labor and Employment Counseling

Employee Hiring/Discipline/Termination

Employment Agreements

Handbooks and Personnel Policies

Harassment Investigation and Training

High-Technology Employment

Unfair Competition and Trade Secrets

Wage and Hour Regulations

Labor and Employment Litigation

Discrimination, Harassment, and Retaliation

Wage and Hour Class Actions

Wrongful Termination

Labor Union Management Relations

Industries

Aerospace & Defense

Automotive

Food and Beverage

Government Business

Healthcare

Hospitality

Retail, Fashion & Beauty

Transportation

Trucking and Logistics

Education

J.D., Widener University School of Law, 2005, *cum laude*

B.A., Villanova University, 1998

Admissions

District of Columbia

Maryland

U.S. District Court for the District of Maryland

U.S. District Court for the District of Columbia

U.S. Court of Appeals for the Fourth Circuit