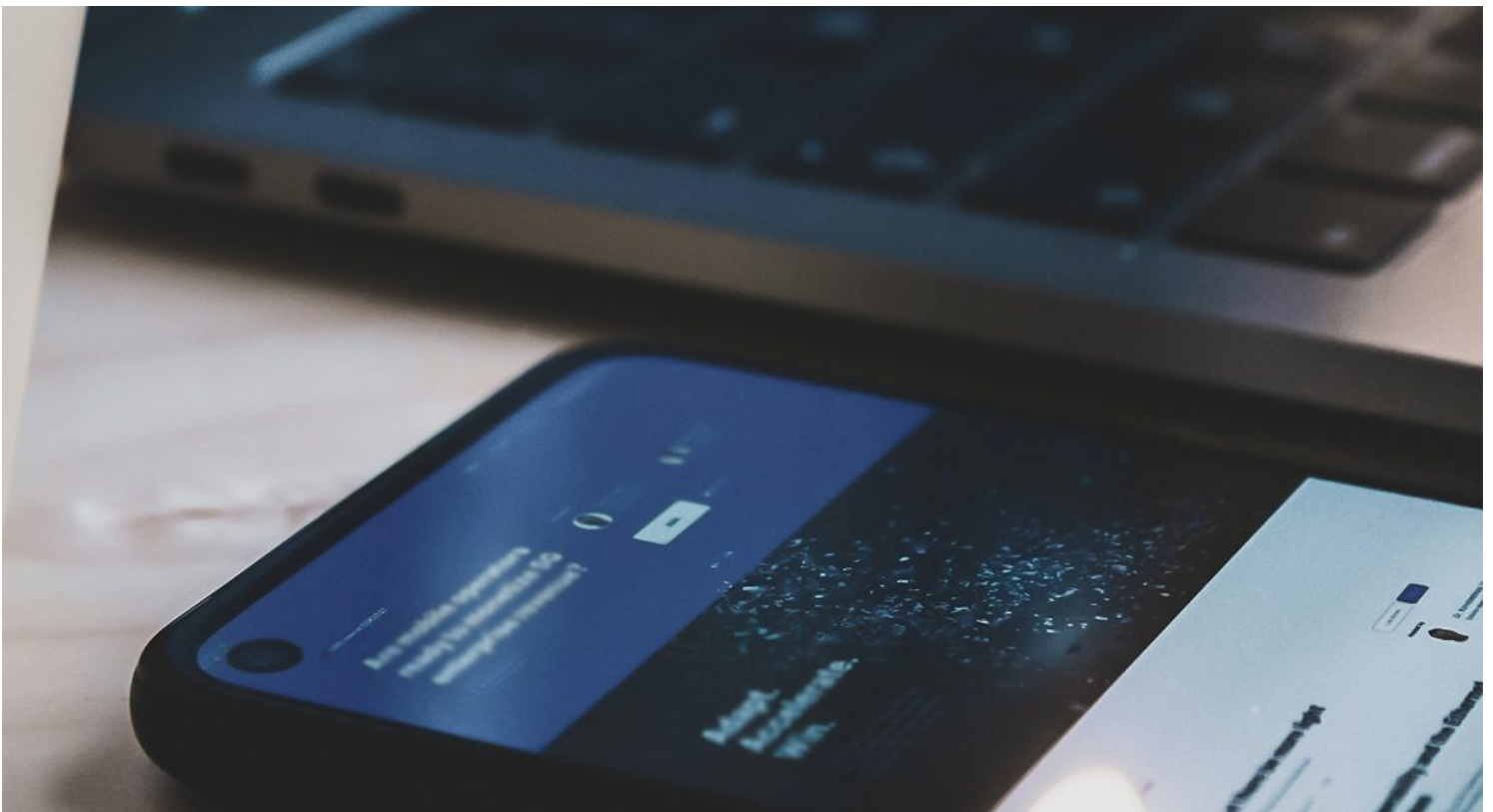


NEWS & INSIGHTS

NLRB Issues Proposed Rule That Would Clarify Employment Status of Graduate Student Workers

INSIGHTSLEGAL UPDATE

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Last month, the National Labor Relations Board (Board) issued a [proposed rule](#) limiting its jurisdiction to exclude private university and college graduate students who perform work in connection with their studies from coverage under the National Labor Relations Act (NLRA). The Board has extended the time for public comment submissions to December 16, 2019.

NLRB to Release Updated Regulations to Determine Graduate Students' Right to Unionize

Need for Clarity

The proposed rule purports to end almost 50 years of back-and-forth over the issue of whether students who perform work on campuses, such as graduate assistants, are employees within the jurisdiction of the NLRA. The rule would effectively reverse the 2016 Board decision on the subject in the [Columbia University](#) case, where the Board looked to the ordinary dictionary definition of "employee" to assert jurisdiction over university student-workers, in furtherance of the NLRA's policy of encouraging collective bargaining.

Should the rule pass, it would uphold the NLRB Board decision in [Brown University](#) and establish that students who perform services related to their studies have a "primarily educational, not economic, relationship with their university," and are therefore not considered employees under the NLRA. The Board opined that this standard rule would bring stability in the approach to these workers and argued that this rule is consistent with the purposes of the NLRA which is focused on economic relationships and not those primarily educational in nature. There would indeed be some added stability in this approach, as rulemaking is generally considered to be harder to change than case law.

Public Comment Period

The proposed rule has already drawn more than [1,300 public comments](#), many under the heading "Comment on Proposal to Deny Grad Workers' Rights." In her dissenting view, member Lauren McFerran pointed out that the NLRA has no special exception for working students, and that bargaining is underway at many schools. She warned that the proposed rule will "raise the specter of renewed unrest on campus," and urged "robust public participation" in the public comment period.

Stay Informed

Saxton & Stump [Labor & Employment](#) attorney [Richard L. Hackman](#) is available to discuss how your institution may be impacted by this developing issue and can provide more information about the proposed rule and the comment period.

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