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### NLRB Expands Potential Recovery in Unfair Labor Practice Cases

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The National Labor Relation Act (“Act”) permits the National Labor Relations Board (“Board” or “NLRB”) to award damages to employees that put them in the financial position in which they would have been if no violation had occurred. This is called “make whole” relief. The recent Board decision in *Thryv, Inc.*, 372 NLRB No. 22, expanded the make whole relief available to employees by finding that it includes all “direct and foreseeable pecuniary harms” that employees suffer as a result of unfair labor practices.

In *Thryv, Inc.*, the Board ruled that the employer committed unfair labor practices when it eliminated a department, laid off employees, and provided severance packages without providing notice and opportunity to bargain about the decision to eliminate the work. Not only was reinstatement of the employees ordered, as well as back pay, the Board also ordered the employer to compensate the employees “for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful layoff.”

In its holding, the NLRB made clear that the inclusion of “direct or foreseeable pecuniary harms” resulting from unfair labor practices will be incorporated into the NLRB’s standard make whole order going forward. The NLRB reasoned that this update to its standard make whole relief is necessary because “rectifying the harms actually incurred by the victims of unfair labor practices and restoring them to where they would have been but for the unlawful conduct” more fully effectuates the purposes of the Act. The expanded damages could potentially include medical bills caused by the loss of health care, the cost of obtaining new health insurance, and interest payments on credit cards that were caused by an employee’s loss of income. The Board made clear this expanded standard will generally be applied to all cases. However, the Board did not address the NLRB General Counsel’s suggestion that compensation for pain and suffering, emotional distress, front pay, and legal fees could also be part of the make whole remedy. Instead, the Board simply stated that those types of damages were not implicated by the facts of the case.

The key take away for employers is that the potential liability for engaging in unfair labor practices has increased, and may well be expanded further in the future.

**Bodman's Workplace Law Group** is available to assist employers with their labor relations strategy, collective bargaining, and defense of unfair labor practice claims. Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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