



Higher Education Alert: NLRB Rules That Graduate Students Can Be Employees & Have a Right to Collectively Bargain/ Unionize

On August 23rd, the National Labor Relations Board (NLRB) ruled that graduate students at Columbia University who perform services in connection with their studies are statutory employees within the meaning of Section 2(3) of the National Labor Relations Act (the Act). A link to the opinion (*Columbia University*) is found at the end of this ALERT. The legal effect of this decision is to reverse a 12 year old NLRB precedent where the NLRB had earlier concluded that graduate assistants *cannot* be statutory employees because they “are primarily students and have a primarily educational, not economic, relationship with their university.” The NLRB’s specific holding is as follows:

...[W]e hold today that student assistants who have a common-law employment relationship with their university are statutory employees under the Act. We will apply that standard to student assistants, including assistants engaged in research funded by external grants. Applying the new standard to the facts here, consistent with the Board’s established approach in representation cases, we conclude (1) that all of the petitioned-for student assistant classifications consist of statutory employees; (2) that the petitioned-for bargaining unit (comprising graduate students, terminal Master’s degree students, and undergraduate students) is an appropriate unit; and (3) that none of the petitioned-for classifications consists of temporary employees who may not be included in the unit.

Employee Benefit Significance

If not doing so already, colleges and universities need to assess the employee status of their graduate students who they employ in a research capacity under the lens of the recent NLRB holding. As employees, they would be subject to the same benefit eligibility requirements as other similarly situated employees and also be allowed to benefit from the protection of a myriad of federal employee benefit rights laws such as the ACA, ADA, COBRA, ERISA and FMLA. Additionally, their new “employee” status could trigger privileges under a variety of state laws as well, the most common being a state paid sick leave law.

If the effect of the NLRB decision is to cause you to now treat graduate students performing research based work as employees for the first time, we would recommend that you consult further with your benefits broker as well as employment law counsel. A link to the NLRB decision is here: [Board Decision](#).

If you have any questions, please contact your Marsh & McLennan Agency consultant or representative.