



**CONSTANGY  
BROOKS, SMITH &  
PROPHETE** LLP



# Next-Generation Workforce Development

*A wider lens on workplace law*

# What We'll Discuss

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- The surge in organizing activity in the current generation
- New organizing tactics and targets
- Anticipated changes to the law
- Changes in available workers
- Vulnerability as **EMPLOYER** and what you can do to protect your employees



# An Organizing Revolution



National Labor  
Relations Board

## Union Election Petitions Increase 57% In First Half of Fiscal Year 2022

Office of Public Affairs

202-273-1991

[publicinfo@nlrb.gov](mailto:publicinfo@nlrb.gov)

[www.nlrb.gov](http://www.nlrb.gov)

April 06, 2022

During the first six months of Fiscal Year 2022 (October 1–March 31), union representation petitions filed at the NLRB have increased 57%—up to 1,174 from 748 during the first half of FY2021. At the same time, unfair labor practice charges have increased 14%—from 7,255 to 8,254.



# Radically Changing Attitudes



## Employees everywhere are organizing. Here's why it's happening now

PUBLISHED SAT, MAY 7 2022-9:15 AM EDT | UPDATED SAT, MAY 7 2022-12:05 PM EDT

“The pandemic was the wakeup call or the catalyst that has prompted two perspectives: ‘is there another way to work and live?’ and the relationship between employers with workers,” said former NLRB chairman and current Georgetown Law professor Mark Pearce. “The vulnerable workers — they were not only scared, they were pissed.”

“Covid was everything,” agreed Jason Greer, a labor consultant and former field examiner agent for the NLRB. “A lot of people said ‘I’m seeing my family members die and my friends die and we were suddenly faced with our own mortality but a lot of organizations still expected you to work just as hard or harder.’”

GALLUP

## Approval of Labor Unions at Highest Point Since 1965

- 68% approve of labor unions, highest since 1965
- 90% of Democrats, 47% of Republicans approve of unions
- Labor union membership remains steady at 9% of U.S. adults

Richard Bensinger, a union organizer with Starbucks Workers United and a former organizing director of the AFL-CIO [believes](#) most of the pro-union workers are in their early 20s, prompting him they are part of a “Gen U” for unions. According to Gallup data from 2021, young adults ages 18 to 34 approve of unions at a rate of 77%.

These younger workforces see each other’s victories as inspiration for their own, experts said.

# A Youth-Led Movement

- Starbucks and Amazon-Staten Island were youth led campaigns
- Culture of activism
- “Grass roots” organizing

**TIME**

How Gen Z Baristas Are Spreading the Starbucks Unionization Effort

**LEFT VOICE**

**The Kids Are Alright: Meet the 17 Year Olds That Want to Unionize Starbucks**



Unions Seek Youth Movement In Fresh Industries, Strategies

**IN THESE TIMES**

**The New Labor Movement Is Young, Worker-Led and Winning**



# Starbucks Workers United

## WHO IS STARBUCKS WORKERS UNITED?

Starbucks Workers United is a collective of Starbucks Partners across the United States who are organizing our workplaces with the support of Workers United Upstate, a union with experience building barista power.

Source: [www.sbworkersunited.org](http://www.sbworkersunited.org) FAQ



# Starbucks Workers United

## WHO IS WORKERS UNITED UPSTATE?

Founded by immigrant garment workers, Workers United Upstate, SEIU, has a longtrack record of fighting for workers' rights. Today, Workers United represents workers across many industries – laundries and warehouses, textile factories and manufacturing plants, and restaurants and coffee shops. Our union believes in building power by organizing all of the workers in an industry, strengthening solidarity and power. We believe that an injury to one is an injury to all and that the only way to act on that value is to stand in solidarity with our coworkers and other workers in our industry.

Source: [www.sbworkersunited.org](http://www.sbworkersunited.org) FAQ



# Attracting Younger Workers



## INSIDER

**How a fluffy orange cat named Jorts stole the internet's heart and became the pro-labor icon 2022 didn't know it needed**



Jorts (and Jean)  
@JortsTheCat



It's so exciting that so many workers are asking about how to form a union where you work! Jean helped me make a thread of basic advice that applies to most workers in the USA



4:28 PM · Feb 8, 2022



Jorts (and Jean)  
@JortsTheCat



It's against the law for your boss to prohibit you from discussing your wages with your coworkers, and also remember there are more workers than there are bosses



12:51 PM · Jan 2, 2022



[Read the full conversation on Twitter](#)



# ...Still, Exceptions to the Rule

The Intercept

**SOME YOUNGER AMAZON WORKERS IN BESSEMER, NEW TO UNIONS, ARE STILL UNDECIDED**



Older workers, who had experience with labor organizing at now-closed plants in the area, are leading the Amazon union push.



# What's the Real Impact?

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- Starbucks: 235,000 workers and 9,000 stores – currently, about 100 stores are unionized, with an average of 28 per unit.
- Amazon: 1.1 million employees - 8,300 in the Staten Island election.
- Less than 1% of each company.



# What Percentage of Your Workers Are Temporary?

We recently conducted an audit of several Korean automotive suppliers in West Georgia and East Alabama. Of the suppliers audited, the majority used significant temporary labor.

Temporary staffing ranged from 38% to 53% of the workers at the audited suppliers.

And, those staffing employees were largely Hispanic.



# “They Are Employees of the Staffing Company”

- The National Labor Relations Board (NLRB) on September 6, 2022, issued a notice of proposed rule-making on the standard for who is a joint employer under the National Labor Relations Act (NLRA).
- Under the proposed rule, two or more employers would be considered joint employers if they “share or codetermine those matters governing employees’ essential terms and conditions of employment,” such as wages, benefits and other compensation, work and scheduling, hiring and discharge, discipline, workplace health and safety, supervision, assignment, and work rules. The Board proposes to consider both direct evidence of control and evidence of reserved and/or indirect control over these essential terms and conditions of employment when analyzing joint-employer status.



# Facing the Foreign Worker Issue

- Created under the North American Free Trade Agreement (NAFTA), TN visa status lasts three years and typically binds an employee to an employer for the duration of the visa. There are two current discrimination lawsuits alleging that staffing agencies, suppliers, and – in one case the immigration attorney – have engaged in a “scheme” to violate U.S. immigration law. According to one lawsuit, an auto parts supplier has consistently used the TN visa to hire Mexican employees as “engineers” but instead employ them on auto part production lines.
- The lawsuit alleges that the companies defrauded the US government by claiming employees would be hired as engineers. Once TN status was approved, the companies would redirect the employees to the auto parts line. These employees allegedly worked long, grueling hours and were paid significantly less than US workers in the same positions. Further, the lawsuit claims that Mexican employees were treated in a discriminatory manner based on race and alienage. In addition, **a number of suppliers have been targeted for using underage workers.**



# Facing the Foreign Worker Issue

- The lawyers who filed that lawsuit are looking for other Korean suppliers to target for additional litigation. Similarly, the government agencies conducting “spot checks” for underage workers are also looking for Korean suppliers to target. Carefully screen your staffing agencies to ensure that TN visas are being used appropriately (i.e., that the workers are actually performing technical tasks – not simply offsetting your labor shortage) and carefully screen (and document) all workers to ensure that there are no underage workers.



# And, Some Things Never Change

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- Work keeping you interested
- Good wages
- Sympathetic help on personal problems
- Full appreciation of work done
- Feeling “in” on things
- Good working conditions
- Personal loyalty to workers
- Promotion, growth in the company
- Job security
- Tactful discipline



# And, Some Things Never Change

- Work keeping you interested
- **Good wages - 1**
- Sympathetic help on personal problems
- Full appreciation of work done
- Feeling “in” on things
- **Good working conditions - 4**
- Personal loyalty to workers
- **Promotion, growth in the company - 3**
- **Job security - 2**
- Tactful discipline





# And, Some Things Never Change

- Work keeping you interested
- Good wages
- Sympathetic help on personal problems - 3
- Full appreciation of work done - 1
- Feeling “in” on things - 2
- Good working conditions
- Personal loyalty to workers
- Promotion, growth in the company
- Job security - 4
- Tactful discipline



# So, What Can We Do?

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- Emphasize the importance of thoughtful hiring.
- Avoid the creation of joint employment relationships
- Give the employees what they want!
  - Full appreciation of work done
  - Feeling “in” on things
  - Sympathetic help on personal problems
  - Job security



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# Thank you!

Questions?

