

What In-house Counsel Should Know About the Dockworkers Strike

Employment and Labor



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In recent weeks, the ongoing dockworkers strike in the United States has captured headlines and raised significant concerns among domestic and global businesses reliant on shipping and logistics. This strike, affecting major ports on the East and Gulf Coasts, has been driven by disputes over wages, working conditions, and job security. As in-house counsel, understanding the implications of this strike is crucial for advising your organization on risk management and supply chain continuity.

For Derek Lipscombe, ACC member and managing counsel – labor and employment advocacy and partnerships for Toyota Motor North America, Inc., that means working to increase domestic production to ensure there are available vehicles for sale at dealers. “We also have both internal and contractual port operations on the East Coast,” he explains. “Prior to the strike, we were able to move up the date on one of the ships that was originally due to deliver the day of the strike. Unfortunately, with the strike, we now have two ships waiting on the seas. If the strike goes more than a few weeks, they will have to return to their ports of origin.”

Recent developments

The strike began on Tuesday following stalled negotiations between the International Longshoremen’s Association (ILA) and an alliance representing shipping companies and port operators. With critical ports from Maine to Texas facing reduced operations, many shipping schedules have been disrupted. This has resulted in delays in deliveries of essential goods,

increased shipping costs, and a cascading effect on supply chains and businesses' operations across various industries and across borders.

The labor dispute underscores a larger trend of workforce mobilization within essential sectors, as workers seek higher compensation and better working conditions in the wake of rising inflation and living costs. The situation remains fluid, with negotiations ongoing, but there is no clear resolution in sight.

And even if the Biden administration invokes a federal law to force workers back to the docks, ILA President Harold Daggett implied that his workers will deliberately slow operations.

Implications for supply chains

For businesses, the strike poses immediate and long-term challenges. Delayed shipments can lead to inventory shortages, increased operational costs, and potential loss of revenue. Companies dependent on just-in-time manufacturing may find themselves particularly vulnerable, unable to meet customer demand due to supply chain disruptions.

In addition, the ripple effects may affect upstream suppliers and downstream customers, creating a complex web of risk that could strain relationships and impact contractual obligations. Companies should also prepare for potential legal ramifications stemming from these disruptions, including breach-of-contract claims and liability issues.

Learn how to make your supply chain more resilient with an ACC webinar on October 22!

Mitigating risk

Lipscombe recommends that in-house counsel work with their respective business partners to ensure that contingency plans are in place for disruptions (which could mean more than labor strikes). "If they have unionized employees who are affected by the strike, then they need to work through their labor contract and with their union on what they can do with temporary shutdowns," he adds. "And with all of their employees who may be affected, they need to know local laws for unemployment benefits as there are usually waiting period in place before benefits can begin, and also whether any of their benefits are affected such as healthcare communication or 401K loan repayments)."

In-house counsel should consider several strategies to mitigate the impact of the dockworkers' strike on their organization:

Assess supply chain vulnerabilities

Conduct a thorough analysis of your supply chain to identify critical points of dependency on affected ports. Understanding these vulnerabilities allows for more targeted risk management.

Diversify suppliers and shipping routes

Explore alternative suppliers and shipping routes to reduce reliance on disrupted ports. This may involve re-evaluating contracts and seeking options that offer greater flexibility.

Review key contracts and engage with outside legal counsel

Review your critical existing agreements — and work with external legal advisors as needed — to understand the implications of contract clauses related to force majeure and delays. Ensure that your contracts are structured to protect your interests during unforeseen disruptions. Your outside counsel may also have gained useful perspective and strategies from working with other clients who face similar issues.

Communicate with stakeholders

Maintain open lines of communication with customers, suppliers, and internal stakeholders. Transparency about potential delays and mitigation strategies can help maintain trust and manage expectations.

Monitor developments

Stay informed about the strike and any developments in negotiations. Regular updates will allow you to adjust your strategies and provide timely advice to your organization.

Prepare for the potential impact on your workforce

Disruptions to a company's supply chain or production line may cause businesses to consider reductions in force.

Employers in the US must comply with the WARN Act notice requirements (US Worker Adjustment and Retraining Notification Act) for plant closures or mass layoffs lasting certain time periods / affecting certain numbers of employees. However, there are exceptions to **such notice requirements**, including for strikers or locked out workers.

For more lessons from recent strikes, review the lessons from the 2023 US autoworkers' strike.

Ensure business continuity

The dockworkers strike serves as a reminder of the fragility of global supply chains. In-house counsel play a critical role in navigating these challenges by providing strategic guidance and legal insights. By proactively addressing vulnerabilities and implementing risk mitigation strategies, businesses can better prepare for the unpredictable nature of labor disputes and their potential impact on operations. As the situation evolves, remain vigilant and adaptable to minimize disruptions and ensure business continuity.

Connect with other in-house lawyers dealing with these issues by joining ACC!

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