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New York has begun enforcing its legislation allowing private sector workers under the US NLRB's jurisdiction to seek relief from the state, which the retail giant has claimed "flips U.S. labor law on its head."

Key takeaways

- New York S 8034A empowers the state labour relations board to regulate private sector labour disputes traditionally adjudicated by the NLRB.
- Amazon has accused New York of unconstitutionally expanding its authority and subjecting employers to duplicative litigation in a new lawsuit.
- California and Massachusetts are currently considering analogous legislation, which may face similar legal pushback.



Amazon sued the New York State Public Employment Relations Board (PERB) on 22 September 2025, challenging the state's new law that allows the PERB to adjudicate private sector labour disputes ordinarily handled by the US National Labor Relations Board (NLRB). The online retailer has urged the US District Court for the Eastern District of New York to permanently enjoin the PERB from asserting its authority under state law over any employers covered by the NLRB.

S 8034A amended the New York State Employment Relations Act 1937 (SERA) to provide

that, unless the NLRB "successfully asserts jurisdiction over any employer, employees, trades, or industries," the state PERB will "promptly certify the exclusive bargaining representative of any bargaining unit previously certified by another state or federal agency." The legislation was introduced in response to the NLRB's current paralysis: US President Donald Trump terminated former Democratic board member Gwynne Wilcox in January 2025, leaving the board without a quorum and unable to issue decisions.

A memorandum filed in support of S 8034A's companion bill, A 8590A, recognised that "[a]bsent a quorum, the [NLRB] lacks the power to take meaningful actions, such as issuing decisions in representation and unfair labor practice cases." It continued that the legislation is intended "to give New York the power to protect employees" when the NLRB is unable to do so.

Amazon: "SERA Amendment is unconstitutional"

In its 22 September complaint, Amazon asserted that S 8034A "threatens to shatter [the] foundation" of private sector labour relations. It noted that the National Labor Relations Act 1935 (NLRA) has guaranteed "a single, unified system for union organizing, collective bargaining, and workplace disputes" for almost a century, and that US Supreme Court precedent has established that "local and state labor laws that purport to replace, supplement, or encroach upon the NLRA's exclusive domain are preempted."

Amazon claimed that S 8034A "flips U.S. labor law on its head" by presuming PERB authority over private sector employers unless the NLRB "successfully asserts jurisdiction" in federal district court. Amazon pointed out that these courts generally "play no role" in NLRB proceedings, rendering the carveout "illusory."

“The SERA Amendment is unconstitutional. It intrudes on and seeks to displace exclusive federal authority. It presumptively places PERB as the primary regulator of labor disputes that fall squarely within the NLRA, even when they are the subject of ongoing NLRB proceedings,” Amazon wrote. “It creates parallel, duplicative proceedings, exposes employers to conflicting obligations, and destroys the national uniformity Congress considered essential to labor peace.”

According to the complaint, the New York PERB has already begun enforcing S 8034A against Amazon. The Amazon Labor Union-International Brotherhood of Teamsters Local 1 (ALU) filed an unfair labour practice charge with the PERB on 15 September 2025 alleging that Amazon retaliated against an employee for his union activities. The PERB issued a Notice of Conference and formally docketed the matter two days later.

Not only does the PERB charge allege conduct governed by the NLRA, Amazon said, but it addresses certain issues that “are *already* the subject of an unfair labor practice charge pending before the NLRB challenging the very same disciplinary actions.”

“By forcing Amazon to respond to PERB regarding allegations that fall squarely under the NLRA and within the adjudicatory power of the NLRB, New York has created the collision of state and federal authority Congress sought to avoid,” the complaint said. “Both PERB and the NLRB now claim jurisdiction over the same employee, the same discipline, and the same productivity issues, yet will apply different statutory regimes and remedies.”

Amazon and the New York PERB declined requests for comment.

Federal opposition to US states’ adjudicatory authority

Amazon is not the only party arguing that S 8034A is unconstitutional. NLRB acting general counsel William Cowen warned against state efforts to regulate private sector labour relations in August 2025. The NLRB reinforced its position by filing a lawsuit against New York state and the PERB on 16 September 2025.

The NLRB is seeking a preliminary injunction against enforcement of S 8034A, which it has claimed is pre-empted by the NLRA.

“S.8034A unlawfully usurps the NLRB’s authority by attempting to regulate areas explicitly reserved for federal oversight, creating a parallel regulatory framework that conflicts with the NLRA,” the NLRB wrote on 16 September.

New York is the first US state to enact legislation like S 8034A, but it probably won’t be the last. California AB 288 was presented to the governor on 22 September 2025 and, if enacted, would subject private employers to state-level enforcement when their workers “lose[] access to an independent, effective and functioning legitimate and expert [NLRB] because . . . [the NLRB] does not have quorum [or] lack[s] . . . funding or staffing [that] prevent the [NLRB] from fulfilling its statutory duties.”

California AB 288 would also apply in situations where the NLRB fails to issue a decision or provide a remedy within specified timeframes. Though Cowen touted the board’s “ability to quickly resolve its ‘oldest cases’” in August, former NLRB chair Marvin Kaplan told Lexology PRO on 16 September 2025 that the backlog of unfair labour practice charges pending at the NLRB continues to grow while the board is without a quorum.

Similarly, the Massachusetts House of Representatives is currently considering H 2086, which would allow the state’s Department of Labor Relations to regulate private labour disputes when the NLRA ceases to pre-empt state law. The state would be authorised in that case to pursue remedies, including back pay and liquidated damages, if it finds that an employer has retaliated against a worker for participating in union activities.

What’s next?

The 22 September 2025 lawsuit challenging the New York law is likely the first of many private legal actions. Claims like Amazon’s may be more persuasive once the NLRB returns to a quorum.

Wilcox’s future at the Board remains uncertain: the US Supreme Court denied her petition for a writ of certiorari on 22 September, leaving her case for reinstatement pending before the US Court of Appeals for the District of Columbia Circuit. However, the US Supreme Court has agreed to hear Rebecca Slaughter’s case for reinstatement to the US Federal Trade Commission (FTC), which hinges on the same precedent and may address Wilcox’s claims.

"A properly functioning Board, which I believe we're going to see once Mayer and Murphy get confirmed, will have enough expertise to deal with these issues quickly and properly," Kaplan said. "These state institutions, to the extent that they adopt or look at NLRB precedent, are not as involved in the day-to-day of addressing that precedent as the Board is You want the Board making decisions because they are the subject matter experts and are best suited to make them."

Attorney James La Rocca in New York

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