

NOTE

ON THIN ICE: HOW HEALTH CARE UNIONS MAY AVERT THIRD-PARTY LIABILITY POST-*GLACIER NORTHWEST*

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The 2023 *Glacier Northwest* Supreme Court decision paved a new path for employers to sue labor unions for damages arising from strikes so long as the union did not take reasonable precautions to mitigate their strike's harm. *Glacier* cut down *Garmon* preemption's effectiveness—a preemption which jurisdictionally shifted any claims related to the National Labor Relations Act (NLRA) from a state's hands and into the hands of the National Labor Relations Board (NLRB). With *Glacier*, unions now must take extra proactive steps to mitigate their strikes' foreseeable harms if they wish to keep *Garmon*'s protections. While there has been extensive discourse regarding *Glacier*'s harm against unions and their ability to effectively strike, there has not been much discussion regarding how *Glacier* subjects unions to third-party liability, let alone in an industry-focused scope.

No labor industry is more susceptible to third-party liability than health care unions. Health care strikes can have devastating and sometimes lethal consequences for patients, leaving third parties injured and their families eager to cast legal blame. If such harms occurred during a strike, it is possible that under *Glacier*, the injured third parties may sue the striking health care union for damages. *Glacier* has left unions vulnerable to liability if they do not take reasonable precautions in their striking, and health care unions, like all unions, must now abide by *Glacier*'s requirements to avoid this vulnerability. They may best do so by providing their employer with advance notice of their strike beyond the NLRA's required ten-day notice. Advance notice as a reasonable precaution provides employers with ample time to prepare for the strike while minimizing *Glacier*'s diminishing impact on a strike's effectiveness, and ultimately protects patients from harm, thereby shielding unions from liability for that harm.

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INTRODUCTION

The right to strike has been paramount to ensuring safe, productive workplaces, with workers often relying on strikes as their only viable means of advocacy. Striking is a right that was largely unquestioned due to its nearly century-long codification.¹ Yet the right to strike was severely weakened by the United States Supreme Court’s 2023 decision *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*.² *Glacier* leaves the right to strike in a fraught state by threatening labor unions with legal repercussions unless they minimize the impact of their strikes.³

While labor unions still do have a right to strike, it is presently limited by the strict bounds of *Glacier*. Prior to *Glacier*, *Garmon* preemption guaranteed that labor unions would be safe from legal repercussions with the understanding that the National Labor Relations Act (NLRA), and the rights it confers, superseded all state claims including those sounding in tort.⁴ Now, under *Glacier*, the Supreme

1. 1935 *Passage of the Wagner Act*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/1935-passage-of-the-wagner-act> (last visited Aug. 27, 2026).

2. See generally *Glacier Nw., Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404 (2023) (holding that unions must take proactive measures to mitigate reasonably foreseeable harms their strikes may cause).

3. *Id.*

4. See *S.D. Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245, 247–48 (1959) (holding that in the absence of a compelling state interest, and in the matter of a dispute related to the NLRA, state jurisdiction must yield to the NLRB and its protections given to workers).

Court opened the door for employers to sue unions for economic damages caused by their strike.⁵

The Court is silent, however, on how far the net of liability may be cast, begging the question of whether *Garmon*'s preemption diminishment paves the way for third parties to sue unions for damages stemming from strikes. There is a myriad of ways in which the consumer may be harmed by a labor strike.⁶ For example, consumers may run the risk of a delayed auto part shipment or longer construction timeline during a strike.⁷ After nine decades of the right to strike, companies and consumers are on notice that a delayed or subpar good or service is the price paid when workers put pressure on their employers to secure their rights.⁸ However, the stakes are significantly higher when the striking party is a health care worker. Like a delayed auto part shipment, a patient may receive delayed care due to short hospital staffing during strikes, but the consequences are much more lethal.

This Note aims to highlight the gap left in the *Glacier* decision, specifically as it pertains to the potential for third-party patients and their families to hold health care unions liable for damages caused by their strikes. By understanding this gap and potential liabilities, health care unions can adjust their strike strategies to mitigate the risk of third-party liability. If labor unions may be held liable for damages unintentionally inflicted upon their employer's consumers or patients, the core of the right to strike principle will evaporate. As such, health care unions need to fully understand the new striking parameters set by *Glacier*, have a concrete vision of the foreseeable harm their strike may cause, and do their best to mitigate that harm against third parties. The best way for health care unions to comply with *Glacier* is to provide their employer with advance notice of their strike—beyond what is statutorily required by the NLRA.⁹ In doing so, health care unions may take reasonable precautions to mitigate harms as required by *Glacier* while still maximizing the impact of their strike and preventing third-party liability.

I. FROM *GARMON* TO *GLACIER*: THE EVOLUTION OF THE RIGHT TO

5. *Glacier Nw.*, 143 S. Ct. at 1415–16.

6. Michael Billet, *Data Shows How Strikes Impact Workers and Communities*, U.S. CHAMBER COM. (Mar. 26, 2025), <https://www.uschamber.com/employment-law/data-shows-how-strikes-impact-workers-and-communities> [https://perma.cc/A4Y9-MWYX].

7. John Irwin, *Auto Industry Risks from Port Strike to Rise Exponentially Each Day, Analysts Say*, AUTO. NEWS (Oct. 2, 2024, at 13:24 ET), <https://www.autonews.com/suppliers/port-strike-leads-vehicle-and-parts-shipment-delays/> [https://perma.cc/PNP7-8AZ6].

8. *See id.*

9. 29 U.S.C. § 158(g).

STRIKE

Striking has been an integral tool in the workers' arsenal of means to achieve a better, safer workplace for nearly a century.¹⁰ Since the issuance of the 1950s *San Diego Building Trades Council v. Garmon*¹¹ decision, when a conflict arose between state law and the right to strike, the state was required to yield their jurisdiction to the National Labor Relations Act (NLRA) and National Labor Relations Board (NLRB).¹² *Garmon*'s deference to the NLRA is substantial, but important, to preserving the federal right to strike. *Glacier* uprooted *Garmon* preemption by putting destructive parameters on the right to strike and increased a state's ability to interfere with that right through judicial intervention.¹³

A. Striking Generally

Workers' rights were revolutionized in 1935 with the passage of the Wagner Act, otherwise known as the NLRA.¹⁴ The NLRA proved critical to establishing and enforcing workers' rights by creating the NLRB and codifying the right to organize and the employer's obligation to permit collective bargaining.¹⁵ Included in the right to organize is the right to engage in "other concerted activities for the purpose of collective bargaining or other mutual aid or protection," which encompasses the right to strike.¹⁶ The NLRA emphasizes the importance of the right to strike by asserting that "[n]othing in [the Act] . . . shall be construed . . . to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."¹⁷ Accordingly, the right to strike has been woven into the fabric of workers' rights for nearly a century.

The right to strike for a lawful objective encompasses both striking for an economic purpose and striking in response to an employer's unfair labor practice.¹⁸ A strike is economically motivated if it is done to obtain objectives such as better working conditions, higher wages, or shorter

10. 1935 *Passage of the Wagner Act*, *supra* note 1.

11. 359 U.S. 236 (1959).

12. *See id.* at 243–44, 246 (holding that the NLRB's jurisdiction over issues related to the NLRA displaces a state's jurisdiction over the matter).

13. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. 174*, 143 S. Ct. 1404, 1413–14 (2023).

14. 1935 *Passage of the Wagner Act*, *supra* note 1.

15. *Id.*

16. 29 U.S.C. § 157.

17. *Id.* § 163.

18. *NLRA and the Right to Strike*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/news-outreach/fact-sheets/nlra-and-right-strike> [https://perma.cc/X8K8-PQPC] (last visited Aug. 24, 2026).

hours.¹⁹ Unfair labor practice strikes protest the employer's unfair labor practices, which are defined by the NLRA.²⁰

While broad, the right to strike is not unlimited. Strikes may be unlawful because the purpose of the strike is unlawful.²¹ For example, unions may not strike to support unfair labor practice they themselves have committed or to force an employer to commit an unfair labor practice.²² Additionally, a union may not strike for certain reasons that are perhaps not unlawful if achieved by other means.²³ The NLRB cites that it would be unlawful to strike with the goal of compelling Employer A to end doing work with Employer B—that is, it is not unlawful for either employer to cease doing business with each other, nor is it illegal for the union to request as such, but it is illegal to *strike* with this goal.²⁴ Aside from unlawful objectives, unions must be sure to follow statutory striking standards. The NLRA views collective bargaining as a mutual obligation between employers and workers, requiring both parties to abide by their lawful requirements.²⁵

Health care unions are subjected to more stringent striking standards.²⁶ Section 158(g) of the NLRA requires a labor organization that works at any health care facility to provide sufficient notice to the institution prior to striking, picketing, or engaging in any “other concerted refusal to work.”²⁷ The notice of intent to strike must be made to the institution in writing and to the Federal Mediation and Conciliation Service (FMCS) through their official striking notification form.²⁸ Likewise, the notice must be made no less than ten days prior to the cessation of work and must inform the employer and FMCS of the day and time that such cessation will commence.²⁹ It is possible for the notice to be extended once given, but both the union and the employer must agree to the extension.³⁰ Stricter striking standards for health care unions exemplifies Congress's and the NLRB's desire to impart as little harm as

19. *Id.*

20. *Id.*; see also 29 U.S.C. § 158(a)(1)–(5) (explaining that an employer's unfair labor practice includes activities, such as discriminating in terms of employment due to membership in labor organization or refusing to collectively bargain).

21. *The Right to Strike*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/strikes> [<https://perma.cc/6LES-SKVS>] (last visited Aug. 24, 2026).

22. *Id.*

23. *Id.*

24. *Id.*

25. See generally 29 U.S.C. § 158 (outlining the various statutory duties that employers and workers owe to each other).

26. *Id.* § 158(g).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

possible onto health care facilities and patients while still permitting unionized health care workers to exercise their rights.

B. Lawful Striking as Defined by Garmon and Glacier

Labor activity, including the right to strike, is dictated by the NLRA.³¹ Unlike employment laws, which may be enforced by federal, state, and local regulations, labor law was understood to be exclusively in the hands of the NLRA and NLRB.³² The degree of the NLRB's jurisdiction over labor-related activities has changed drastically in recent years.³³ *Garmon* preemption, since its inception in 1959, long held that states lack jurisdiction over most state claims that are related to a protected or prohibited labor activity.³⁴ In 2023, *Glacier* undercut this preemption by holding that if a union did not take reasonable precautions to mitigate their strike's harm, then it is no longer a lawful strike.³⁵ If it is no longer a lawful strike, then the strike is unprotected by the NLRA, and subsequently, the matter is in the state's jurisdiction.³⁶ Presently, striking is in limbo as unions are left to reconcile their previous understanding of *Garmon*'s protections with *Glacier*'s new threat of repercussions and lack of guidance to avoid such repercussions.³⁷

1. The *Garmon* Era

The right to strike was largely recognized as a pinnacle right for workers that superseded state claims for most of its existence. This was cemented with *San Diego Building Trades Council v. Garmon*,³⁸ which prioritized the right to strike above most state claims by granting extraordinary deference to the NLRB.³⁹ In *Garmon*, a union asked the employer to retain only those who were union members or who applied

31. *Id.* § 157.

32. *Employment Laws: Overview and Resources for Employers*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/odep/publications/fact-sheets/employment-laws-overview-and-resources-for-employers> [<https://perma.cc/KEY9-SFEJ>] (last visited Aug. 24, 2026).

33. *Compare S.D. Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244–46 (1959) (forbidding state interference in NLRA-related matters from 1959–2023), *with Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1413–16 (2023) (holding that when unions fail to take reasonable precautions, state interference is permissible).

34. *Garmon*, 359 U.S. at 244–46.

35. *Glacier Nw.*, 143 S. Ct. at 1414–16.

36. *Id.*

37. *Id.* at 1413–14; *Garmon*, 359 U.S. at 244–46.

38. 359 U.S. 236 (1959).

39. *See generally id.* (holding that activities protected or prohibited—whether actually or arguably—by the NLRA are within the exclusive jurisdiction of the NLRB).

for union membership shortly after hiring.⁴⁰ The employer refused, prompting the union to peacefully picket the business with the purpose of using customers and suppliers to pressure the employer into agreement.⁴¹ The employer sought an injunction and damages; the lower court enjoined the union from picketing or using other pressure forces, awarding \$1,000 in tort damages.⁴²

The Court ultimately reversed the award and enjoinder, setting a precedent that would be essentially undisturbed for over half a century.⁴³ In its holding, the Court found that the NLRA precluded the lower court from granting an award for damages arising out of protected union activities.⁴⁴ The Court held that when it is clear or can be fairly assumed that the state is regulating an activity protected or prohibited by the NLRA, “due regard for the federal enactment requires that state jurisdiction must yield” to the NLRA and the NLRB’s subsequent jurisdiction over the matter.⁴⁵ The state’s requirement to yield to the NLRA and NLRB applied to laws of broad general application, including tort claims, not just those regulating or relating to labor.⁴⁶ As such, when a claim concerns protected or arguably protected union activity, a state’s jurisdiction is displaced—even if the “substantive terms of a state law are wholly consistent with that of the NLRA”—for the sake of protecting federal labor interests.⁴⁷

Garmon recognizes that the NLRB, through proper administrative processes subject to federal review, may adjudicate the extent of state preclusion relating to a protected union activity.⁴⁸ The NLRB may decide that a union’s questioned conduct is protected by the NLRA, and if so, “the matter is at an end, and the [s]tates are ousted of all jurisdiction.”⁴⁹ If the NLRB determines that union activity is neither protected nor prohibited by the NLRA, the question becomes whether states may

40. *Id.* at 237.

41. *Id.*

42. *Id.* at 237–38.

43. *Id.* at 248.

44. *Id.* at 245–248.

45. *Id.* at 244.

46. *Id.*; see also Stephen F. Befort, *Demystifying Federal Labor and Employment Law Preemption*, 13 LAB. LAW. 429, 431 (1998) (“The ‘arguably protected or prohibited’ test broadly excludes state laws and claims without regard to the substance of the state regulation.”).

47. Befort, *supra* note 46, at 431; *Garmon*, 359 U.S. at 244–47. An activity is “arguably” protected or prohibited by the NLRA if the party claiming preemption can demonstrate that their case is one that the NLRB could legally decide in their favor. *Int’l Longshoremen’s Ass’n v. Davis*, 476 U.S. 380, 395 (1986). To do so, the asserting party must “advance an interpretation of the [NLRA] that is not plainly contrary to its language and that has not been ‘authoritatively rejected’ by the courts or the Board.” *Id.* (citing *Marine Eng’rs v. Interlake S.S. Co.*, 370 U.S. 173, 184 (1962)).

48. *Garmon*, 359 U.S. at 245.

49. *Id.*

interfere with the activity.⁵⁰ The NLRB's potential failure to assert jurisdiction or their potential silence over a matter still does not grant states jurisdiction over the dispute.⁵¹ The Court reiterated that "the failure of the Board to define the legal significance under the Act of a particular activity does not give the [s]tates the power to act."⁵² Essentially, states may not have jurisdiction without clear directive from the NLRB.⁵³ This extremely large deference is given to the NLRA and NLRB out of concerns that a lack of deference would lead to conflict between state laws and federal labor policy—a risk too great for the Court to run given the need for uniformity of workers' rights across the nation.⁵⁴

What's more, it is natural that the NLRB would have jurisdiction over NLRA-related questions given its inherent expertise. The NLRA is a "complex and interrelated federal scheme of law, remedy, and administration."⁵⁵ As such, the courts have held that Congress did not intend that this substantive piece of law "be enforced by any tribunal competent to apply law generally"; instead, Congress vested primary interpretation and application of the NLRA to a "specific and specially constituted tribunal," meaning the NLRB.⁵⁶ Preemption is merely the "practical manifestation of the Supremacy Clause," and so, it is legally unproblematic for Congress to give such large jurisdiction to an adjudicating body tasked with overseeing a piece of legislation.⁵⁷ Therefore, because the NLRA has been interpreted to have exclusive jurisdiction over controversies covered by the Act, state law will be preempted by federal law and jurisdiction.⁵⁸

An easy way to understand *Garmon* preemption is that it is a "choice-of-forum rather than a choice-of-law" question.⁵⁹ When a state claim is asserted to be preempted by *Garmon* and the NLRA, the question becomes whether the NLRB or the state has jurisdiction over the dispute.⁶⁰ If the activity falls under § 7 or § 8 of the NLRA,⁶¹ then "state

50. *Id.*

51. *Id.* at 245–46.

52. *Id.* at 246.

53. *Id.* ("In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction.").

54. *Id.*

55. *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 389 (1986) (quoting *Garmon*, 359 U.S. at 243).

56. *Id.*

57. *Id.* at 388.

58. *Id.* at 387–88.

59. *Id.* at 391.

60. *Id.*

61. Section 7 codifies the right of self-organization and collective bargaining, while § 8(a) defines prohibited unfair labor practices that may interfere with § 7 rights,

jurisdiction” (and, in effect, any remedy via state claims) is extinguished.⁶² A claim under *Garmon* preemption is simply, yet powerfully, “a claim that the state court has no power to adjudicate the subject matter of the case.”⁶³

Using this logic, *Garmon* forbade awarding damages for alleged harms stemming from protected union activity. There is a caveat; a state may have jurisdiction over an NLRA-related issue so long as they can show a compelling state interest, which can result in damages or enjoinder contingent on the circumstances.⁶⁴ A compelling state interest is set to a relatively high bar, though. The Court acknowledges that some issues are so necessary for a state’s wellbeing that they cannot be overruled by federal interests without a directive from Congress.⁶⁵ Even so, the Court limits these issues to only state interest in maintaining domestic peace and preventing violence, effectively preventing state interference without an act of or threat of violence.⁶⁶ Accordingly, *Garmon* holds that in matters related to, or arguably related to, federally protected or prohibited activities under the NLRA, the NLRA reigns supreme and takes general precedence over state laws.⁶⁷

Subsequent case law understood *Garmon* to “preclude state interference” with the NLRB’s enforcement of the NLRA.⁶⁸ Courts continually recognized that *Garmon* forbade state interference with the regulation of activities protected (arguably or actually) or prohibited (arguably or actually) by the NLRA.⁶⁹ Courts also held that *Garmon*’s protections are not just limited to striking, but other protected union activity, including job targeting programs.⁷⁰ Thus, *Garmon* and its

such as discrimination in hiring or termination based upon union membership status. 29 U.S.C. §§ 157, 158(a).

62. *Int’l Longshoremen’s Ass’n*, 476 U.S. at 391.

63. *Id.* at 393.

64. *S.D. Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959).

65. *Id.*

66. *Id.*

67. *See generally Garmon*, 359 U.S. 236 (holding that the NLRA preempts state law in matters concerning NLRA-related activities, thereby creating the *Garmon* preemption). An act prohibited by the NLRA is preempted by *Garmon* because courts find it best that the NLRB adjudicate matters prohibited by § 8 of the NLRA. *Id.* at 245. Examples of prohibited activity include a union taking adverse action against a coworker based on whether they support or have joined the union or an employer firing or demoting a worker based on their support or membership in a union. *Employee Rights Under the National Labor Relations Act*, U.S. DEP’T LAB. (May 2, 2022), https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/eo_posters/employeeerightsposter11x17_2019final.pdf [<https://perma.cc/GUL3-P8GH>].

68. *Idaho Bldg. & Constr. Trades Council v. Inland Pac. Chapter of Associated Builders & Contractors, Inc.*, 801 F.3d 950, 956 (9th Cir. 2015).

69. *Id.*

70. *See id.* at 957 (holding that Idaho’s ban on “job targeting” or “market recovery” programs—which are often utilized by construction unions to increase

protection of workers' rights was largely unquestioned and broadly applied following its implementation.

2. Glacial Shift

After six decades, *Garmon* preemption was turned upside down by *Glacier*, which weakened *Garmon* by placing a burden on unions to mitigate the harms of their strikes.⁷¹ *Glacier* concerned a dispute between a union and their employer, Glacier Northwest, over concrete wasted in the course of a strike.⁷² The union initiated a strike, with some unionized workers striking and some staying at work.⁷³ The cessation of work caused a single day's supply of concrete that was stored in concrete trucks to become hardened and useless, but the trucks themselves were not damaged.⁷⁴ The lower courts held that Glacier Northwest could not recover because the loss was "incidental to a strike arguably protected by federal law," aligning with the common understanding of the *Garmon* preemption.⁷⁵ The Court disagreed, holding that the NLRA does not protect strikes where unions fail to take reasonable precautions to mitigate the risks of harm their strikes may cause.⁷⁶

Glacier's damage to workers' right to strike comes from the Court's newfound unwillingness to broadly apply *Garmon* preemption. The Court recognized in *Glacier* that the NLRA has "unusual" preemption standards; anything not only protected—but *arguably* protected—by the NLRA takes precedence over state law claims, going beyond the general understanding of the federal Supremacy Clause.⁷⁷ Yet, "arguably protect[ed]" is not without substance and requires evidence beyond a conclusory assertion.⁷⁸ The *Glacier* Court continued to read non-existent requirements into the NLRA, saying that the NLRA's right to strike is limited to strikes only where unions take "reasonable precautions" to protect their employer's property from "foreseeable, aggravated, and imminent danger."⁷⁹

Despite adding a new requirement to striking regulations, *Glacier* is relatively vague on what "reasonable precautions" means. The Court

members' access to work by subsidizing project bids—is preempted by § 7 of the NLRA, which protects the practice of job targeting).

71. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1416 (2023).

72. *Id.* at 1410.

73. *Id.* at 1412.

74. *Id.* at 1410.

75. *Id.* at 1412. (quoting *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 500 P.3d 119, 123 (Wash. 2021) (en banc)).

76. *Id.* at 1412–13.

77. *Id.* at 1410–11; see also U.S. CONST. art. VI, cl. 2 (Supremacy Clause).

78. *Glacier Nw.*, 143 S. Ct. at 1411.

79. *Id.* at 1413.

specifies that reasonable precautions should be taken against foreseeable damages, harms, or losses.⁸⁰ Applying this new standard to the strike at issue in *Glacier*, the Court found that the union did not take reasonable precautions to prevent harm to Glacier Northwest's property.⁸¹ Instead, the Court found that the union took affirmative steps to damage Glacier Northwest's property by choosing to strike when there was wet cement in the cement trucks.⁸² Further, the Court believed that the unionized truck drivers prompted the creation of perishable product knowing that they would later be striking and causing an unquestionably foreseeable loss, arguing that this is a step above stopping work at a time when product loss is foreseeable.⁸³ Further still, the Court found that the union designed their strike "with the intent to sabotage Glacier's property."⁸⁴ The Court does not distinguish between taking affirmative steps to cause harm and failing to take reasonable precautions to prevent harm.⁸⁵ Instead, it appears that the former just strengthens the argument for the latter because reasonable precautions cannot be taken when there is an intent to harm property.⁸⁶

Glacier opens the door to arbitrary enforcement of what reasonable precautions means given the Court's failure to define what a reasonable precaution is. The Court held that the reasonable precautions test does not mandate any one action in particular; rather, it instills an undefined duty upon unions.⁸⁷ It would be helpful if Congress or the NLRB could provide legislative clarity on "reasonable precautions," but they have yet to do so. Courts are unlikely to provide a brightline rule on the matter, but will instead opt for a case-by-case analysis of whether reasonable precautions were taken. Thus, because of this uncertainty about what constitutes "reasonable precautions," unions should take whatever reasonable precautions they deem necessary to mitigate any foreseeable harms against their employer through their NLRA protected activity, and if they fail to do so, the activity may no longer be protected.⁸⁸

Requiring reasonable precautions prior to striking is troubling on many grounds. First, it essentially diminishes the purpose of economic strikes, which are designed to cause economic damage to employers as a pressure. If a union cannot run the risk of damaging an employer's property or business, then they have very little leveraging capabilities in an already employer-heavy power dynamic. Second, *Glacier*'s vagueness

80. *Id.* at 1413–14.

81. *Id.* at 1415–16.

82. *Id.* at 1416.

83. *Id.*

84. *Id.* at 1410.

85. *Id.* at 1415–16.

86. *Id.* at 1416.

87. *Id.* at 1413–14.

88. *Id.*

on what reasonable precautions are necessary opens the door for employer-friendly judges to declare that a union's precautions simply were not enough, like the Court did in *Glacier*.⁸⁹ Likewise, the Court made no mention of what harms can be considered foreseeable, likely forcing unions to undergo a precursory tort analysis to determine whether an impact from a once-legal strike would now make the activity illegal. All these concerns weaken *Garmon* preemption in practicality, which is worrisome not only for the union-employer relationship, but also from a third-party liability perspective.⁹⁰

Once the door to tort liability on the part of unions has been opened, it is hard to close and even harder to bar others from entering. The Court has burst that door open, and the potential third-party liability implications, especially for unionized health care workers, are concerning. Analyzing these concerns will help health care unions understand any foreseeable harm that strikes may cause and what additional steps, if any, they must take to prevent assuming tort liability from harms that patients face during strikes.

II. ADVANCE NOTICE OF STRIKE AS A REASONABLE PRECAUTION

Glacier's restriction of *Garmon* preemption left many questions about striking unanswered including most seriously, how, when, and to whom unions may be liable for damages. These concerns are especially relevant in the health care union context considering that the damage caused by health care union strikes may be life-threatening, making the potential damages at stake much higher. Couple this concern with a rise in health care strikes following the COVID-19 pandemic,⁹¹ and health care unions have a potential recipe for disaster if they do not adequately understand the new bounds set by *Glacier* and take necessary steps to prevent liability to patients who received physically damaging and recoverable harms during a strike. *Glacier* was silent on the issue of whether third parties may hold unions liable, but that silence, coupled with basic tort law, strongly implies that they may.⁹² Accordingly, health care unions must take reasonable precautions to prevent harm to patients during their strikes. Health care unions should take reasonable

89. While arguably a minimal precaution, almost half of the striking workers notified *Glacier Northwest* of their work stoppage and that their concrete trucks were fully loaded, thereby alerting their employer of the potential for wasted concrete if they did not act quickly. *Id.* at 1412.

90. See Alexander S. Whistler, *Labor Law's Preemption Problem: Glacier Northwest and What the Fate of Garmon Means for American Workers*, 75 U.C. L.J. 853, 876 (2024).

91. See *infra* note 126 and accompanying text.

92. See *supra* notes 80–86 and accompanying text.

precautions by providing advance notice to their employer of the strike beyond what is statutorily required of them.⁹³

A. Glacial Impact—How Glacier Diluted Striking Effectiveness

Unions had a visceral and immediate response to *Glacier*, one that carried over into striking practices. The International Brotherhood of Teamsters, the union whose local was at issue in *Glacier*, declared that the decision was an orchestrated attack on workers in favor of corporations.⁹⁴ Teamsters chastised the Court for violating a right that “has been on the books for nearly 100 years” and argued that they were not “upholding the law, nor . . . advancing the American people.”⁹⁵ Even so, Teamsters vowed that their right to strike will not be taken away and that “[a]ll workers, union and nonunion alike, will forever have the right to withhold their labor.”⁹⁶

Despite the strong reaction from unions, labor law scholars disagree on how impactful *Glacier* will be in practice. There is a commonly held sentiment that in the current age of pro-corporation and anti-workers’ rights decisions not seen since the *Lochner* Era,⁹⁷ the *Glacier* decision could have been worse.⁹⁸ *Glacier* did not entirely overthrow the *Garmon* preemption; rather, it shifted how *Garmon* is applied.⁹⁹ After all, *Glacier* was not the first decision to require that unions take some steps to prevent harm during strikes.¹⁰⁰ For instance, in *Bethany Medical Center*, the NLRB ruled that § 7 of the NLRA does not protect activity that is “unlawful, violent, in breach of contract, or otherwise indefensible.”¹⁰¹ The NLRB holds that conduct is indefensible when workers fail “to prevent such imminent damage as would foreseeably result from their

93. 29 U.S.C. § 158(g).

94. Press Release, Int’l Bhd. of Teamsters, O’Brien: SCOTUS Attacks All U.S. Workers (June 1, 2023), <https://teamster.org/2023/06/obrien-scotus-attacks-all-u-s-workers/> [<https://perma.cc/KUD4-WWDH>].

95. *Id.*

96. *Id.*

97. The “*Lochner* Era” endured from 1905 until the mid-1930s—estopped by the passage of the NLRA and the New Deal—and is characterized by Court decisions that repeatedly struck down labor laws. See Samuel Bagenstos, *Lochner Lives On*, ECON. POL’Y INST. (Oct. 7, 2020), <https://www.epi.org/unequalpower/publications/lochner-undermines-constitution-law-workplace-protections/> [<https://perma.cc/3395-TPS4>]. The Court used “freedom of contract” to justify striking down minimum wage laws, union bans, and minimum hour laws, among other things. *Id.* The *Lochner* Era proved to show imbalance favoring employers and an inequality against workers. *Id.*

98. Whistler, *supra* note 90, at 856–58.

99. *Id.* at 858–59.

100. See generally *Bethany Medical Center*, 328 NLRB 1094 (1999) (holding that a worker’s activities are not protected under the NLRA if the worker fails to prevent imminent harm).

101. *Id.* at 1102 (citing *NLRB v. Wash. Aluminum Co.*, 370 U.S. 9, 17 (1962)).

sudden cessation of work.”¹⁰² While certainly a reasonable parameter on what defines protected activity, the requirement to prevent such imminent damage as foreseeably would result from sudden cessation puts much less pressure on unions compared to *Glacier*’s reasonable precautions test.¹⁰³

The *Bethany Medical Center* decision exemplifies such a notion. In *Bethany Medical Center*, catheterization laboratory workers walked off their job site for two hours in protest of employment conditions.¹⁰⁴ The walk-out occurred fifteen minutes prior to the first catheterization procedure scheduled for the day, and the workers refused to return to perform an emergency procedure.¹⁰⁵ The hospital contended that the workers’ refusal to perform both scheduled and emergency procedures was indefensible conduct.¹⁰⁶ The NLRB disagreed.¹⁰⁷ They emphasized that indefensible conduct can occur without actual resulted injury, but regardless, the workers’ behavior was not indefensible.¹⁰⁸ At the time of the walkout, no patients were currently in the laboratory, and all of the scheduled procedures were merely delayed or transferred to another facility.¹⁰⁹ The NLRB was also not concerned with the workers’ refusal to complete the emergency procedures because the emergency-status patients were redirected to other hospitals.¹¹⁰ Therefore, the NLRB found that the workers did not foreseeably create an imminent risk of harm to patients that warranted losing statutory protection of their walkout.¹¹¹

It is presumable that under *Glacier*’s new reasonable precautions standard, the NLRB would have reached a different result.¹¹² Refusing to perform emergency procedures objectively creates a greater risk of harm than ceasing to perform work while knowing that perishable concrete is in trucks. Thus, it is highly likely that while the NLRB found that the Bethany Medical Center workers’ strike did not create a foreseeable risk of imminent harm—to the degree that the conduct is indefensible and no

102. *Id.* at 1094.

103. *Id.* Compare the circumstances in *Bethany Medical Center* with the circumstances in *Glacier*, where *Bethany Medical Center* found that a walk-out fifteen minutes prior to the first appointment was a protected and permissible activity, meanwhile *Glacier* found that a work-stoppage while concrete was being mixed is unprotected. *Id.*; *Glacier Nw., Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1412 (2023).

104. *Bethany Medical Center*, 328 NLRB at 1094.

105. *Id.* Note, the health care workers at issue in this case were not unionized; hence, § 8(g)’s ten-day notice requirement did not apply to the workers, but their conduct was nonetheless protected by § 7. *Id.*

106. *Id.* at 1094.

107. *Id.* at 1095.

108. *Id.* at 1094–95.

109. *Id.* at 1094.

110. *Id.* at 1095.

111. *Id.*

112. *Glacier Nw., Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1414 (2023).

longer protected by the NLRA—the *Glacier* Court would likely find that the workers failed to take reasonable precautions to mitigate their foreseeable harms, subjecting them to liability.

Supporters of *Glacier* could contend that the decision merely extends *Bethany Medical*’s principle by increasing a union’s duty to prevent harm—essentially expanding, rather than transforming, the existing rule. Yet, many unions, their members, and their supporters are not content with an “it could have been worse” mentality.¹¹³ A less-than-terrible decision is not indicative of progress; it just shows “how bad the Court’s decisions actually *are*.”¹¹⁴ Likewise, the normalization of unfavorable workers’ rights decisions desensitizes and distracts the public from the diminishing of workers’ rights and the gradual increase of corporate power.¹¹⁵ *Glacier* is not the end of striking, but it is the beginning of the end as unions see it.

Moreover, cases are still being decided under *Garmon*, prompting the argument that the standard has not been eliminated. Take, for example, *Davis v. Benihana*,¹¹⁶ where the plaintiff was fired for discussing wages with a coworker.¹¹⁷ He then sued Benihana under whistleblower and anti-wage discrimination statutes.¹¹⁸ The court found the case was preempted by *Garmon* because the worker’s conduct was arguably protected by the NLRA, but more strongly, the employer’s conduct was arguably prohibited by the NLRA.¹¹⁹ Thus, the court must defer to the “exclusive competence” of the NLRB to “avert the danger of state interference with federal labor policy.”¹²⁰ *Davis* demonstrates that despite *Glacier*, workers may still be protected by *Garmon* and exempt from state input on the matter.¹²¹

Regardless of the conflicting discourse among labor scholars and unions, the data shows that striking has been down since *Glacier*. In 2024, major work stoppages¹²² decreased by forty-one percent compared

113. Jenny Hunter, *Glacier Northwest is Yet Another “Could Have Been Worse” Decision That’s Very Bad for Workers*, BALLS & STRIKES (June 2, 2023), <https://ballsandstrikes.org/scotus/glacier-northwest-is-yet-another-could-have-been-worse-decision-thats-very-bad-for-workers/> [https://perma.cc/HRD3-ULCR].

114. *Id.*

115. *Id.*

116. 772 F. Supp. 3d 524 (D.N.J. 2025) (holding that *Garmon* preempts a worker’s state anti-wage discrimination claim against their employer).

117. *Id.* at 530.

118. *Id.*

119. *Id.* at 540–42.

120. *Id.* at 530.

121. *Davis* concerned arguably protected and prohibited activities that are not incidental to striking, raising the question of whether, in practice, *Glacier* may only harm striking-related protections, but not other NLRA protected activities. *Id.*

122. For the purposes of data collection, “major work stoppages” is defined as strikes involving at least 1,000 workers and lasting one full work week. See Margaret Poydock, Joe Fast & Daniel Perez, *271,500 Workers Went on Strike in 2024*, ECON.

to 2023, the year that *Glacier* was decided.¹²³ In 2023, a staggering 458,900 workers participated in strikes, but 2024 saw only 271,500 workers engaged in major work stoppages.¹²⁴ Admittedly, the striking data over the past five to six years is abnormal. The COVID-19 pandemic produced an incredible decrease in strikes, with only 27,000 workers striking in 2020 compared to 425,000 workers in 2019.¹²⁵ Regardless, the 2023 and 2024 data suggest that *something* between 2023 and 2024—post-COVID-19—caused a dramatic decrease in major work stoppages. It is problematic to argue that *Glacier* played no part in a nearly fifty percent decrease in strikes.

Fear was likely a main factor behind post-*Glacier* striking decreases. The decision was new and left few concrete parameters for unions to abide by, all while promising harsh consequences. At first blush, *Glacier* sets a relatively low bar for when damages are achievable by employers, perhaps leaving unions feeling hesitant to strike. It is difficult to balance the risk and reward of an action when there are not clear definitions for when repercussions will apply. It is probable that a misunderstanding of *Glacier* and fear surrounding the decision is what caused the recent decrease in strikes.

B. What Does Health Care Have to Do with It?

Despite the chilling effects of *Glacier* on striking across all industries, health care strikes have been on the rise and will likely continue to grow. Nursing strikes have “more than tripled” from 2020 to 2023, and in 2024, health care accounted for five of the twenty-one major work stoppages.¹²⁶ Health care strikes generally occur on a massive scale as well. In October of 2025, 31,000 Kaiser Permanente health care workers, including nurses in Hawaii, Oregon, and California, engaged in a strike with hopes of improving safe staffing levels, fair pay, and employer respect.¹²⁷ The national increase in striking is largely due to the

POL’Y INST. (Feb. 20, 2025), <https://www.epi.org/publication/271500-workers-went-on-strike-in-2024-current-labor-law-doesnt-adequately-protect-workers-fundamental-right-to-strike/> [https://perma.cc/E4SR-ZSEB].

123. *Id.*

124. *Id.*

125. *Annual Work Stoppages Involving 1,000 or More Workers, 1947 – Present*, U.S. BUREAU LAB. STATS. (Feb. 20, 2026), <https://www.bls.gov/web/wkstp/annual-listing.htm> [https://perma.cc/7M56-ER9M].

126. Carol B. Davis, *After the Pandemic, Nurses and Other Healthcare Workers are Demanding More ... and Getting It*, GEO. UNIV.: HEALTH CARE FIN. INITIATIVE (Nov. 2024), <https://hcfi.georgetown.edu/blog/after-the-pandemic-nurses-and-other-healthcare-workers-are-demanding-more-andgetting-it/> [https://perma.cc/S4AQ-BFE6]; Poydock, Fast, & Perez, *supra* note 122.

127. Brandy Pinkerton, *31,000 Kaiser Nurses & Healthcare Workers Begin Strike in Massive Walkout*, NURSE.ORG (Oct. 14, 2025), <https://nurse.org/news/kaiser->

COVID-19 pandemic, which demanded that health care workers suffer extreme working conditions fueled by staffing shortages, higher workloads, and increased liability.¹²⁸ In turn, this caused employee burnout, workplace turnover, safety concerns, and worsening patient care.¹²⁹ Health care also has a considerable amount of unionized workers, with thirteen percent of overall health care professionals and twenty percent of nurses belonging to unions.¹³⁰ Amidst the stress across the industry, overworked health care workers often turn to their unions to find workplace redress.¹³¹

Many health care strikes occur with the objective of bettering patient care.¹³² Health care, in its essence, “is devoted to the good of the patient” in a way that many other professionals are not devoted to the good of their craft.¹³³ This adds a level of nuance to health care strikes—unionized workers are not simply striking for the good of themselves; they are striking for the good of their patients.

Health care collective organization efforts touch an especially sensitive nerve in the labor law landscape. Skeptics find that striking is counterintuitive to patient wellbeing, arguing that striking harms, not helps, patients.¹³⁴ In particular, health care strikes may cause cancelled appointments and procedures, or delays in patient admittance.¹³⁵ Likewise, some question whether standardized union salaries encourage poor work performance and whether contractual obligations make it

nurse-strike-updates/ [https://perma.cc/DAS3-9EBW]. Interestingly, the 2025 Kaiser Permanente strike follows an equally large Kaiser strike that occurred in October of 2023, demonstrating the increase of nursing and health care strikes and workers’ persistence achieve their desired pay and workplace conditions. Selena Simmons-Duffin & Scott Maucione, *After Historic Strike, Kaiser Permanente Workers Win 21% Raise Over 4 Years*, NPR (Oct. 14, 2023, at 14:11 ET), <https://www.npr.org/sections/health-shots/2023/10/13/1205788228/kaiser-permanente-strike-contract-deal-reached> [https://perma.cc/DK64-8NVK].

128. Davis, *supra* note 126.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Why Nurses Are Striking—and What It Reveals About the Care Families Receive*, NAVI NURSES, <https://navinurses.com/blog/why-nurses-are-striking-and-what-it-reveals> [https://perma.cc/UD8H-V2ZM] (last visited Oct. 2, 2026) (discussing how reasons for striking including staff shortages or unmet compensation needs have strong ties to improving patient care).

133. Erich H. Loewy, *Of Healthcare Professionals, Ethics, and Strikes*, 9 CAMBRIDGE Q. HEALTHCARE ETHICS 513, 515 (2000).

134. Richard Choi, Jamie Nicole LaBuzetta & Mitch Hargis, *The Ethics of Unionization for America’s Healthcare Workers: How and Why We Got to This Moment*, NEUROCRITICAL CARE SOC’Y: CURRENTS (Apr. 10, 2025), <https://currents.neurocriticalcare.org/Leading-Insights/Article/the-ethics-of-unionization-for-americas-healthcare-workers-how-and-why-we-got-to-this-moment> [https://perma.cc/T96W-3HDY].

135. *Id.*

difficult for hospitals to fire those who provide subpar care and put patients at risk.¹³⁶

Others argue that health care workers should not be denied their essential right to strike because of the sensitive nature of their employment alone.¹³⁷ Unionized health care workers have a statutory right to strike, just like any other worker.¹³⁸ It would be categorically unfair and contrary to the NLRA to deny them this statutory right.¹³⁹ Proponents and opponents of health care strikes seem to have the same goal of ensuring proper patient care, yet cannot reach agreement on how to achieve these goals.

Statistics show that patient care can be unsatisfactory, or even dangerous, during strikes, potentially giving rise to claims for damages. A 2012 study found that in New York, nurses' strikes increase in-hospital mortality by 18.3% and thirty-day readmission rates by 5.7% for patients admitted during a strike.¹⁴⁰ Such critique is valid and difficult to ignore. But unlike a unionized machinist with the ability to delay production of an inanimate product, health care unions only have their patients as bargaining chips.¹⁴¹ And so, unfortunately, sometimes patients become "means toward the employees' ends," even if the workers' goal is to "serve the good of patients."¹⁴² Regardless of a perhaps noble purpose behind health care strikes, *Glacier* has nevertheless opened the door for health care unions to be liable for the above-mentioned concerns.

Litigation over harms caused during health care strikes is not unheard of, and in fact, raises interesting questions of liability and its transfer. Recent litigation arose from a 2023 nurses' strike at Mount Sinai Hospital in New York City.¹⁴³ During the strike, a four-month-old baby tragically died from a complex heart condition while being treated in the neonatal intensive care unit (NICU).¹⁴⁴ The baby's parents questioned the sudden death because their baby was stable and had been progressing

136. *Id.*

137. Loewy, *supra* note 133, at 516.

138. 29 U.S.C. §§ 157, 158(g).

139. *See id.*; *see also* Loewy, *supra* note 133, at 516 (discussing how it is an unjust argument to say that a "particular kind of worker under no circumstances has a right to strike" based upon the type of their employment).

140. Jonathan Gruber & Samuel A. Kleiner, *Do Strikes Kill? Evidence from New York State*, 4 AM. ECON. J.: ECON. POL'Y 127, 127 (2012).

141. *See* Loewy, *supra* note 133, at 516 ("Except in the pocketbook, strikes in healthcare settings generally do not directly hurt the employer. The employer is hurt through the patient.").

142. *Id.* at 516–17.

143. Melissa Russo & Chris Glorioso, *I-Team: Bronx Parents Sue Hospital After Baby Dies During Nursing Strike*, NBC N.Y. (Jan. 10, 2025, at 11:43 CT), <https://www.nbcnewyork.com/investigations/bronx-parents-sue-mount-sinai/6102006/> [<https://perma.cc/BRC5-USU9>].

144. *Id.*

prior to his passing.¹⁴⁵ Their concerns prompted them to file suit against Mount Sinai Hospital and various Mount Sinai physicians.¹⁴⁶ While the complaint is not against the nursing union, it does blame their strike for the baby's death.¹⁴⁷ The complaint alleges that the striking NICU nurses were inadequately replaced with "unexperienced and unqualified nurses" and that the hospital "was spread thin during the strike and there were missed opportunities to communicate the signs that [the baby] was deteriorating."¹⁴⁸ Furthermore, it is alleged that "hospital insiders admitted that better preparation for the strike" could have prevented the baby's death.¹⁴⁹ For their part, Mount Sinai has said that their hospital was "fully staffed during the strike, with 1-to-1 nurse-to-baby ratios," and that replacement nurses in the NICU were "all trained in neonatal intensive care."¹⁵⁰

Again, the striking nursing union is not a named defendant in this case, but it is very plausible that they could be. The strike is the alleged ultimate cause of the baby's death, but the hospital and doctors are named at fault for the death.¹⁵¹ It is possible for the injured family to hold the union liable instead of the hospital under *Glacier* so long as they allege the union failed to take reasonable precautions to mitigate the harm caused by their strike.¹⁵² In fact, the family's attorneys so strongly blamed the strike for the baby's death that they outwardly warned that other parents should be concerned about their children's wellbeing during future nursing strikes.¹⁵³ Litigation in this case is still ongoing at the time of this Note, and so the result is presently unknown. Nevertheless, this case is a stark reminder that the worst possible scenario may happen during a health care strike and that litigation may be sought to avenge the irreparable losses faced by patients or their families.

The dramatic rise in health care strikes and their significant potential for damage makes health care unions particularly susceptible to *Glacier's* diminishing effects. Studies indicate that strikes harm patients regardless of whether unions strike with the intent to ultimately improve patient care. As such, it is crucial that health care unions understand when they

145. *Id.*

146. Complaint at ¶¶ 34–174, *Morton v. Pastuszko*, Index No. 800679/2025E (N.Y. Sup. Ct. 2025).

147. *Id.* ¶¶ 7–8.

148. *Id.* ¶¶ 7–12.

149. *Id.* ¶ 10.

150. Russo & Glorioso, *supra* note 143.

151. Complaint, *supra* note 146, ¶ 10.

152. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1414 (2023).

153. James Flippin, *Cautionary Tale from Last Nurse's Strike Should Concern Parents*, 77WABC (Jan. 16, 2026, at 11:40 CT), <https://wabcradio.com/2026/01/16/cautionary-tale-from-last-nurses-strike-should-concern-parents/> [<https://perma.cc/VX62-FYB3>].

may be held liable to third-party patients for damages and what reasonable precautions they must take to avoid third-party liability.

C. The Tort of It All

A basic tort analysis is all that is necessary to see how *Glacier* opens the door for unions to be liable to third parties. For a tortfeasor to be liable for tort damages against another, five elements must be established. First, the tortfeasor must have had a duty of care in some capacity to the plaintiff.¹⁵⁴ Second, the tortfeasor's conduct must have failed to conform to the standard set by their duty.¹⁵⁵ Third, the tortfeasor's conduct must be a cause in fact of the victim's injuries.¹⁵⁶ Fourth, the tortfeasor's actions must be a proximate cause of the harm.¹⁵⁷ Finally, there must actually be damages as a result of the harm.¹⁵⁸ This liability structure is the same for those directly impacted by the tortiously striking workers (here, employers would be directly impacted) and the third parties who are inadvertently harmed (here, patients and their families).

Glacier set the duty of care that unions must abide by to avoid tort liability: a union must take reasonable precautions to mitigate risks of harm stemming from strikes.¹⁵⁹ Without taking reasonable precautions, their duty is violated, and their strikes are unlawful and no longer protected by the NLRA.¹⁶⁰ Whether or not the other four tort elements are met will naturally follow contingent on a union's failure to abide by or adhere to this duty. Proximate cause will more often than not be the element at issue when determining whether a union is liable for a patient's harm.

Proximate cause boils down to scope of harm and the notion of whether a tortfeasor's actions were a foreseeable cause of the harm.¹⁶¹ The relevant question for determining proximate cause is "whether the defendant should have reasonably foreseen, as a risk of [their] conduct, the general consequences or type of harm suffered by the plaintiff."¹⁶² Therefore, proximate cause utilizes a foresight standard, not a hindsight

154. DAVID W. ROBERTSON, WILLIAM POWERS, JR., DAVID A. ANDERSON & OLIN GUY WELLBORN III, *CASES AND MATERIALS ON TORTS* 76 (5th ed. 2017).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1414 (2023).

160. *Id.*

161. JOHN DIAMOND, LAWRENCE C. LEVINE & ANITA BERNSTEIN, *UNDERSTANDING TORTS* 200–02 (7th ed. 2023).

162. *Id.* at 201.

standard.¹⁶³ If the resulting harm is too removed from the action to the point that it could not be a reasonably foreseen result by the tortfeasor, there is generally no proximate cause.¹⁶⁴

A tortfeasor may be liable to a third party if the harm done is a foreseeable result of the tortfeasor's negligence.¹⁶⁵ The foreseeably harmed third party then increases the tortfeasor's duty to encompass both the immediate victim and the third party.¹⁶⁶ This concept is best demonstrated in the producer-consumer context. Take, for example, *MacPherson v. Buick Motor Co.*¹⁶⁷ Here, the defendant was an automobile manufacturer who sold a car to a retail dealer, who then resold the car to the plaintiff.¹⁶⁸ The car collapsed due to a faulty wheel, causing injury to the plaintiff.¹⁶⁹ The court considered whether the manufacturer owed a duty of care "to any one but the immediate purchaser."¹⁷⁰ The court said that yes, in circumstances where there is a foreseeable knowledge of danger, the manufacturer may be liable to those beyond the immediate purchaser.¹⁷¹ For liability to exist, the manufacturer must have known "that in the usual course of events the danger will be shared by others than the buyer."¹⁷² This danger must be foreseeable for liability to attach.¹⁷³ Accordingly, in an industry like health care, where a worker knows that their act may cause foreseeable harm down the chain of command and extend to patients, they may be liable for such harms, thereby expanding the scope of their duty.

The *Glacier* Court did not clarify the scope of reasonable precautions necessary for unions to take, nor did it clarify the bounds of whose foreseeable harm should be mitigated.¹⁷⁴ The lack of boundaries of who may pursue a claim for damages caused by a strike opens the door for this scope to include a third party so long as their harm is reasonably foreseeable. A union can often foresee how their strike may cause harm to a third party—especially in the health care context—

163. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 104 (N.Y. 1928); see also DIAMOND, LEVINE & BERNSTEIN, *supra* note 161, at 200 ("[T]he prevailing rule requires that the plaintiff's injury be a foreseeable consequence that the defendant should have reasonably anticipated.").

164. *Palsgraf*, 162 N.E. at 104.

165. Mark A. Geistfeld, *The Principle of Misalignment: Duty, Damages, and the Nature of Tort Liability*, 121 YALE L.J. 142, 155 (2011).

166. *Id.*

167. See generally *MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (N.Y. 1916) (holding that a manufacturer may be liable for harm occurring to a third-party producer).

168. *Id.* at 1051.

169. *Id.*

170. *Id.*

171. *Id.* at 1053.

172. *Id.*

173. *Id.*

174. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1413–14 (2023).

establishing sufficient proximate cause to allow a third party to bring a tort claim or claim for damages against a union under *Glacier*.

D. Third-Party Harms in the Health Care Context

Health care strikes are not without controversy due to their obvious and severe potential for harm. For example, data suggests that hospital productivity is reduced during strikes.¹⁷⁵ The previously referenced New York study also indicated that patients are less likely to receive care at both emergency and nonemergency facilities during strikes, with “admissions of both groups [decreasing] by about 28 percent at hospitals with strikes.”¹⁷⁶ Strikes inherently cause dramatically decreased staffing, which in turn may cause denial of patient care, subpar care, and a scramble to find staffing coverage via temporary nurses. Any such situation may plausibly lead to a damages claim against a health care union being brought by a third party, whether that is the patient themselves or their family member.¹⁷⁷

It is not difficult to think of the multitude of worst-case scenarios that may arise during a health care strike, but an incident at Allina Health in Minneapolis exemplifies the potential for damage. Over four thousand Allina nurses, represented by the Minnesota Nurses Association, went on strike for thirty-seven days in 2016.¹⁷⁸ During this strike, disaster struck when a replacement nurse administered medicine through a patient’s IV instead of their muscle.¹⁷⁹ This mistake sent the patient into intensive care for three days and caused the Centers for Medicare and Medicaid Services to place the hospital in “immediate jeopardy” status.¹⁸⁰ It was later discovered that the temporary nurse’s error was caused by a communication breakdown and was of no fault of her own.¹⁸¹ Following this incident, a correction plan was instituted, which required “adding a nurse observer when needed and retaining emergency room staff on

175. Sarah H. Wright, *Evidence on the Effects of Nurses’ Strikes*, NBER DIGEST, July 2010, at 3, <https://live-nber.pantheonsite.io/sites/default/files/2019-08/jul10.pdf> [<https://perma.cc/7KS4-5TCD>].

176. *Id.*

177. See generally *supra* notes 135–45 (detailing the litigation brought by a patient’s family against a hospital and its doctors, citing the nursing strike as the cause of the patient’s death).

178. Kelly Gooch, *Allina Nurses Vote to End Strike After Months of Negotiations and 6 Weeks off the Job*, BECKER’S HOSP. REV. (Oct. 14, 2016), <https://www.beckershospitalreview.com/hr/allina-nurses-vote-to-end-strike-after-months-of-negotiations-and-weeks-off-the-job/>.

179. *CMS Put Allina Hospital in ‘Immediate Jeopardy’ for Drug Error During Nurses Strike*, BECKER’S CLINICAL LEADERSHIP (Oct. 24, 2016), <https://www.beckershospitalreview.com/quality/cms-puts-allina-hospital-in-immediate-jeopardy-for-drug-error-during-nurses-strike/> [hereinafter *CMS Put Allina Hospital*].

180. *Id.*

181. *Id.*

repeating back verbal orders.”¹⁸² The Allina Health scenario (despite occurring pre-*Glacier*) is a prime example of the many things that could happen during a nursing strike: the implementation of rushed and unprepared replacement nurses; a blow to the hospital’s reputation via being placed in immediate jeopardy status; and most importantly, severe medical harm to patients. It is possible that had the Allina Health crisis happened post-*Glacier*, there would have been more consequences, beyond a correction plan, to the striking union, hospital, or both.

In addition to third-party tort liability, it is also necessary to consider how health care facilities, a health care union’s employer, may be directly impacted by strikes. Hospitals may lose millions of dollars during strikes because they are forced to bring in expensive travel or temporary staff to ensure the hospital is operational.¹⁸³ Likewise, a hospital may lose revenue for canceled procedures and appointments during strikes.¹⁸⁴ Strikes may also negatively impact a health care facility’s reputation.¹⁸⁵ Potential applicants may choose not to work for a hospital that cannot reach an agreement with their staff, and potential patients may choose to go elsewhere in support of striking workers. While the impacts on hospitals are not a matter of life and death, as is the case for third-party patients, health care facilities will still suffer from strikes, with such damages possibly being recoverable under *Glacier* if no reasonable precautions to mitigate harms were taken.

It is likewise worth considering to what extent the health care facility, rather than the striking workers, is liable for such third-party harms. Who is the ultimate gatekeeper of care? Is it the striking workers’ responsibility to ensure that patients receive care in their absence, or is it the facility’s? Such questions can only truly be answered, which is in a foreseeability analysis, discussed in length next.

182. *Id.*

183. Les Masterson, *Nursing Strikes Can Cause Harm Well Beyond Labor Relations*, HEALTHCARE DIVE (Aug. 15, 2017), <https://www.healthcaredive.com/news/nursing-strikes-can-cause-harm-well-beyond-labor-relations/447627/> [https://perma.cc/8SZ9-4NMV]. Replacing fulltime nursing staff with travel nursing positions is costly considering that travel nurses receive “much higher pay than the typical staff nurse makes,” so much so that employers question whether travel nursing pay is a result of price-gouging. Jan Odom-Forren, *Travel Nursing: Price Gouging or Supply and Demand?*, 37 J. PERIANESTHESIA NURSING 153, 153 (2022). Aside from higher pay, “hidden costs” of travel nurses may include administrative overhead, housing stipends, and onboarding investment, among other things. Sarah Knight, *Hidden Costs of Travel Nursing Contracts: What Hospitals Must Know*, SHIFTMED (Dec. 3, 2025), <https://www.shiftmed.com/insights/knowledge-center/uncovering-the-hidden-costs-of-travel-nursing-contracts/> [https://perma.cc/VED6-JCAD].

184. Masterson, *supra* note 183.

185. *Id.*

E. What Precautions Are Enough, and When Are Precautions Necessary?

Determining what is reasonably foreseeable harm under the *Glacier* standard is especially nuanced in the health care context considering the constraints health care workers already operate under. Most notably, § 8(g) of the NLRA prescribes certain parameters on health care unions by requiring that all striking unions employed by a health care facility must give ten days' notice of the action.¹⁸⁶ Thus, the question is whether the NLRA's harm prevention mechanisms suffice to prevent reasonably foreseeable harms in strikes or if health care unions need to take extra steps before striking to abide by *Glacier*.

The NLRA was updated in 1974 by Public Law 93-360, which enacted health care amendments to the NLRA, including § 8(g).¹⁸⁷ Through this amendment, Congress responded to hospital labor issues and sought to balance the right to strike with ensuring adequate patient care.¹⁸⁸ Case law and NLRB decisions are cognizant of the congressional intent to balance workers' rights with patient safety and take this intent into consideration.¹⁸⁹ Specifically, courts have recognized that "[t]he ten-day notice requirement was intended to prevent disruption of patient care by giving hospitals time to plan ahead for strikes."¹⁹⁰ The NLRB likewise recognizes that Congress "chose to treat the health care industry uniquely because of its importance to human life" by instituting § 8(g)'s ten-day notice requirement, and as such, it broadly covers health care union activity.¹⁹¹

In practice, the balance has "leaned in favor of preserving health care services, often at the expense of denying workers the full benefit of the [NLRA]."¹⁹² For instance, a violation of § 8(g)'s parameters automatically constitutes an unfair labor practice, thereby permitting complainants (often the union's employer) to pursue relief.¹⁹³

186. 29 U.S.C. § 158(g).

187. John M. Miller, *National Labor Relations Act: History and Interpretation of the Healthcare Amendments*, 60 MARQ. L. REV. 921, 921 (1977).

188. *SEIU, United Healthcare Workers-West v. NLRB*, 574 F.3d 1213, 1216–17 (9th Cir. 2009); see also Miller, *supra* note 187, at 922 (explaining that one of the purposes behind the amendment was to "extend coverage of the Act" to health care employees, while the other was "to prevent undue disruptions of health care services, especially vital lifesaving services").

189. See, e.g., *SEIU*, 574 F.3d at 1217. The NLRB held that the addition of § 8(g) served as "a trade-off" to address concerns of health care service disruptions caused by lawful labor disputes. *Alexandria Clinic, P.A.*, 339 NLRB 1262, 1264 (2003). Section 8(g) was meant to "give the health care institutions sufficient advanced notice of a strike or picketing to permit timely arrangements for continuity of patient care." *Id.*

190. *SEIU*, 574 F.3d at 1217.

191. *N.Y. State Nurses Ass'n*, 334 NLRB 798, 800 (2001).

192. Miller, *supra* note 187, at 922.

193. *Id.* at 926–27.

Furthermore, § 8(g) applies not just to strikes, but to all work cessations.¹⁹⁴ The stricter guidelines imposed on unions in health care facilities demonstrate a congressional and societal recognition that the right to strike is important, but the need for adequate and sometimes lifesaving care is superseding.

Considering this, it is unclear whether a health care strike can be a sufficient proximate cause of harm that leads to a recoverable claim for patients. Health care is fast-paced and unpredictable—one of the causes driving health care strikes—making it difficult to prescribe a catch-all rule to help health care unions properly strike under *Glacier*. It is possible that in some circumstances, the safeguards of § 8(g) are sufficient to prevent harm, while in other cases, more needs to be done to meet *Glacier*'s reasonable precautions test. Thus, whether taking reasonably foreseeable precautions is necessary will likely have to be reviewed on a case-by-case basis.

There are several factors that may help determine whether § 8(g) is enough to protect health care unions from third-party liability or if striking unions need to take extra steps to minimize the harms of their strikes. Take, for example, size of strike, which is perhaps the most important consideration. If the strike is small, hospitals likely can easily bring in temporary staff to take the place of striking workers with little disruption for patients. On the other hand, large strikes, such as the recent Kaiser Permanente strike (which saw over thirty thousand nurses and health care professionals strike across three states), are very likely to cause major disruptions like short staffing and cancelled or rescheduled appointments and procedures.¹⁹⁵ It is reasonably foreseeable that if such a large number of workers are striking, recoverable harm to patients will likely result.

Other factors to consider include the health care facility's location, current and/or predicted patient load, and time of year. If a facility is in a rural or highly urban area, the facility may need more notice than § 8(g)'s required ten days to adequately prepare for a strike and ensure proper staffing.¹⁹⁶ In particular, rural health care facilities struggle tremendously without adequate staffing, causing a negative ripple effect that impedes other staff, special services, and administration.¹⁹⁷ Poorly staffed rural health care facilities could be in a near-crisis mode during a

194. See *N.Y. State Nurses Ass'n*, 334 NLRB at 798 (finding that nurses who, at their Union's behest, refused to volunteer for overtime and refused to work assigned overtime engaged in a concerted refusal to work, requiring a § 8(g) notice).

195. Pinkerton, *supra* note 127.

196. See *Rural Workforce Fragility: How One Vacancy Can Disrupt an Entire Healthcare Facility*, SUPPLEMENTAL HEALTH CARE (Feb. 6, 2026), <https://shccares.com/blog/workforce-solutions/rural-workforce-fragility-healthcare-staffing/> [<https://perma.cc/Z48L-JRMP>].

197. *Id.*

strike given their dependability on every single employee—a tough crisis to balance with the critical importance of rural strikes, which often highlight workplace issues in underrepresented health care facilities.¹⁹⁸

Likewise, advance notice may be an appropriate reasonable precaution if it is anticipated that the facility will be particularly inundated with a high number of patients during the strike. It may also be required if the union plans to strike during a low-coverage time of the year, like holidays. While not exhaustive, these factors are illustrative of the types of factors that striking health care workers will need to consider in their post-*Glacier* strikes. When these factors are present, the statutorily prescribed ten-days' notice probably will not suffice as a reasonable precaution to mitigate harm.¹⁹⁹

The best way for health care unions to take reasonable precautions in situations where harm is foreseeable is by giving their employer advance notice of the strike. Section 8(g)'s good faith requirements already seek to mitigate harms to patients during health care strikes, but there are circumstances where § 8(g)'s ten-day notice does not adequately prepare a facility for the strike, especially when the above-mentioned factors are present.²⁰⁰ The *Glacier* decision focused heavily on the time-sensitivity of the concrete workers' strike and how they created a massive sense of urgency for the employer.²⁰¹ Time is of absolute essence in a health care facility. If a strike leaves a facility unprepared, urgent situations that *Glacier* warned of can easily occur.²⁰² Therefore, it is beneficial for health care unions to notify their facility of their strike in advance of § 8(g)'s ten-day notice as a means of taking reasonable precautions to mitigate harm.

By providing advance notice, the ball is now in the health care facility's court to ensure adequate temporary staffing during the strike. Unions are only responsible for taking reasonable precautions themselves; *Glacier* said nothing about a union's liability for an employer's neglect to take action after the union took reasonable precautions.²⁰³ Thus, it is recommended that when circumstances

198. See generally *Essentia Health Clinic Workers and Advanced Practice Providers End Historic ULP Strike*, MINN. NURSES ASS'N (July 22, 2025), <https://mnnurses.org/essentia-health-clinic-workers-and-advanced-practice-providers-end-historic-ulp-strike/> [<https://perma.cc/EZ96-GWQZ>] (detailing a strike that occurred in Duluth, Minnesota and sixty-nine associated rural clinics across Minnesota and Wisconsin).

199. 29 U.S.C. § 158(g).

200. See, e.g., *CMS Put Allina Hospital*, *supra* note 179 (discussing the harms caused by the lawful Allina strike, demonstrating that even when striking under lawful conditions, harm may still arise).

201. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1410–11 (2023).

202. *Id.* at 1411–12.

203. See *id.* at 1413.

surrounding the strike indicate that patient harm is possible, the union give the facility advance notice to comply with its duty as prescribed by *Glacier*. With advance notice, the health care facility may be able to adequately prepare for the strike and minimize patient harm itself. This could include bringing in temporary staff prior to the strike to ensure proper training or rescheduling routine procedures and appointments, ultimately decreasing the risk of recoverable harm. Regardless of the precautions health care facilities choose to take, the union would have mitigated their risk of harm by giving advance notice.

The largest downfalls of advance notice are that a union may have to implement more long-term strategic planning in their striking and that it may potentially decrease the effectiveness of the strike. Strikes are designed to cause harm and chaos to an employer, and with advance notice, the health care facility will be better prepared, which is intrinsically against a strike's goal. Advance notice may diminish a strike's capacity to induce chaos, but health care strikes may still impose severe economic harm, such as the cost of bringing in temporary travel nurses.²⁰⁴ While advance notice is less than ideal, unions are operating under new parameters set by *Glacier*, and as long as *Glacier* is good law, they must abide by these new parameters to avoid incurring liability. Luckily, it does not take much effort for a union to provide advance notice, nor does it impact the strike itself, making it a practical solution. Providing notice beyond what is required of § 8(g) is the best way to ensure the facility is better prepared, the strike may still commence, and, most importantly, the risk of patient harm, and therefore the union's liability, is minimized.

The amount of advance notice required is best decided on a case-by-case basis. Considering the above-mentioned factors will help in determining the appropriate length of notice, but unions ultimately know their facilities best. Take, for example, the Tenet Healthcare hospital strike, which saw 3,100 nurses across six hospitals strike for one day.²⁰⁵ If temporary nurses are readily available or if a hospital has the non-unionized staff necessary to get by for a day, advance notice may not be needed. On the other hand, if the hospitals are in areas where self-staffing is not possible for the day, and temporary staff are not willing to take a short contract for a one-day strike, significant advance notice may be required. What amount of notice constitutes a reasonably foreseeable precaution is very circumstantial and depends upon the specific circumstances surrounding the strike and the facility's ability to prepare.

204. Odom-Forren, *supra* note 183.

205. Rachel Berger, *3,100 Tenet Nurses Strike for Patient Safety*, NAT'L NURSES UNITED (Jan. 13, 2026), <https://www.nationalnursesunited.org/article/3100-tenet-nurses-strike-for-patient-safety> [<https://perma.cc/5AE4-3N9U>].

The historic 2026 New York City nursing strike exemplifies the reality of what happens with statutory notice, and what could happen with ample notice.²⁰⁶ On January 12, 2026, nearly fifteen thousand nurses went on strike, targeting NewYork-Presbyterian/Columbia, Montefiore Medical Center, and three Mount Sinai hospitals.²⁰⁷ The striking nurses claimed the strike was necessary to force hospitals to guarantee minimum staffing ratios, higher wages, and a more secure working environment following violent attacks and attempted shootings.²⁰⁸ The strike generated massive discourse and even prompted Governor Kathy Hochul to issue a Disaster Emergency due to the health care staffing shortages.²⁰⁹

Reports indicate that impacted hospitals prepared for “weeks” despite them receiving the standard ten-day notice.²¹⁰ Preparation efforts included tasks such as securing travel nursing contracts (costing NewYork-Presbyterian \$60 million), cancelling scheduled surgeries, accelerating discharges, and transferring patients to highly specialized units.²¹¹ While not confirmed, it is possible that hospitals were informally tipped off regarding the strike by the New York State Nurses Association’s (NYSNA) press release, which informed that ninety-seven percent of New York City’s private sector nurses voted to authorize the strike roughly twenty days before the strike began.²¹² The weeks of preparation likely prevented severe patient harm.²¹³

206. See generally Bill Hutchinson, *Largest Nurses Strike in New York City History Ends as Holdout Workers Ratify Contract*, ABC NEWS (Feb. 22, 2026), <https://abcnews.com/US/largest-nurses-strike-new-york-city-history-ends/story?id=130383617> [<https://perma.cc/XV3N-HFK4>] (discussing the resolution of the 2026 New York City nursing strike, which is the largest in the city’s history).

207. Joseph Goldstein, *Nearly 15,000 Nurses Go on Strike at Major New York City Hospitals*, N.Y. TIMES (Jan. 13, 2026), <https://www.nytimes.com/2026/01/12/nyregion/nurses-strike-hospitals-nyc.html>.

208. *Id.*; see also Chaunie Brusie, *3 Nurses Disciplined After Attempted Hospital Shooting; Union Calls It Retaliation*, NURSE.ORG (Dec. 9, 2025), <https://nurse.org/news/nurses-disciplined-speaking-out-safety-shooting/> [<https://perma.cc/XK8J-G5MD>] (discussing a November 2025 attempted shooting at Mount Sinai Hospital and how the aftermath increased tension between unionized nurses and the employer hospital).

209. N.Y. Exec. Order No. 56 (Jan. 9, 2026), <https://www.governor.ny.gov/executive-order/no-56-declaring-disaster-emergency-counties-bronx-nassau-new-york-and-contiguous#main-content>.

210. Goldstein, *supra* note 207; *Northwell Nurses Deliver 10-Day Strike Notices at Three Long Island Hospitals*, N.Y. STATE NURSES ASS’N (Jan. 2, 2026), <https://www.nysna.org/news/northwell-nurses-deliver-10-day-strike-notices-three-long-island-hospitals> [<https://perma.cc/24YZ-K4VF>].

211. Goldstein, *supra* note 207.

212. *97% of NYC Private Sector Nurses Vote to Authorize Strike*, N.Y. STATE NURSES ASS’N (Dec. 22, 2025), <https://www.nysna.org/news/97-nyc-private-sector-nurses-vote-authorize-strike> [<https://perma.cc/8WJ8-FRG2>].

213. The legal aftermaths of this strike are not yet fully understood at the time of this Note. Yet the personal harms that strikes inflict on patients and health care workers themselves cannot be underscored. See generally Joseph Goldstein, *Pedro Lives in a*

It is hard to say what would happen if the largest hospitals in New York City had a mere ten days to prepare for fifteen thousand nurses striking. The nurses are entitled to their strike and raised many important points in doing so, but now, under *Glacier*, they have a responsibility to take reasonable precautions to mitigate harm. If the health care unions were to give advance notice beyond the required ten-days, as they, perhaps inadvertently, did with NYSNA's press release, then they can give the hospital time to make necessary preparations while still putting pressure on employers—such as the \$60 million paid by NewYork-Presbyterian.²¹⁴ Under less-than-ideal legal constraints, advance notice is the best way to prevent patient harm while still making a point known, much like the New York City nurses did with their forty-one-day strike.²¹⁵

CONCLUSION

Health care strikes are on the rise.²¹⁶ COVID-19 exposed the soft, white underbelly of working conditions in health care facilities, and many workers will continue to rightfully, and legally, strike to advocate for fair pay, better hours, and job security. A rise in strikes does not negate the fact that, in a post-*Glacier* world, health care unions must take reasonable precautions to mitigate harm caused by their strikes. *Garmon* preemption no longer shields unions from being tortiously liable for the harms their strikes cause.²¹⁷ As such, it is imperative (and now legally required) that unions take actionable steps to minimize their strike's damages.

The *Glacier* Court provided little guidance for this new directive, meaning that unions should perhaps overcorrect by going beyond what is statutorily required of them. This is especially, if not uniquely, critical in the health care context. The potential harms and damages caused by

Hospital. His Nurses Are on Strike. He Misses Them., N.Y. TIMES (Jan. 26, 2026), <https://www.nytimes.com/2026/01/26/nyregion/nyc-nurses-strike-patients-children.html> (detailing how Pedro—a two-year-old who lives in a pediatric cardiology unit—his mother, and his nurse emotionally suffered without each other during the strike).

214. Goldstein, *supra* note 207.

215. Approximately 10,500 nurses were able to reach a contract agreement with Mount Sinai Health System and Montefiore Medical Center nearly one month after the strike commenced. Joseph Goldstein, *N.Y.C. Nurses Reach Deal to End Strike at Two Hospital Systems*, N.Y. TIMES (Feb. 9, 2026), <https://www.nytimes.com/2026/02/09/nyregion/nyc-nurses-strike-ends.html>. The remaining 4,000 nurses employed at NewYork-Presbyterian/Columbia did not reach an agreement until the strike hit the forty-one-day mark on February 21, 2026. Joseph Goldstein, *New York Nurses' Strike Ends After 6 Weeks as Last Holdouts Approve Deal*, N.Y. TIMES (Feb. 21, 2026), <https://www.nytimes.com/2026/02/21/nyregion/nyc-nurses-strike-ends.html>.

216. See *supra* notes 197–204.

217. See *S.D. Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

health care strikes are incredibly high, sometimes a literal matter of life or death. Even with ten-days' notice, health care facilities often scramble to find coverage, procedures get pushed back, and patients are denied care,²¹⁸ all instances which could feasibly result in damages. Thus, to comply with the Court's directive and to avoid liability, health care unions should provide their employers with advance notice of their strike. The amount of notice should be determined on a case-by-case basis contingent on the union and health care facility's circumstances.

Health care unions may be concerned that providing advance notice of their strike may minimize their strike's impact, but the impact would also be minimized by potential damages owed to an injured third party. It is lamentable that unions must take strides to minimize the pressures their strikes are designed to cause, but advance notice of the strike will give hospitals the time needed to prevent patient harm while still allowing unions to strike effectively. Thus, providing notice beyond what is statutorily required by § 8(g) will ensure that health care unions' strikes comply with *Glacier's* reasonable precautions requirement with little hindrance to their strikes' impact, preventing health care unions from foreseeably harming patients and incurring liability to third parties.

218. N.Y. Exec. Order No. 56, *supra* note 209.