

Labor & Employment Alert
December 2014

If At First You Don't Succeed, Try, Try Again: The National Labor Relations Board Reissues Election Rule Aimed At Quicker Elections

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NLRB Proposed Election Rule Changes Are Likely To Result In More And Quicker Elections

Over the last three years we have kept you informed of the progress of the National Labor Relations Board's ("Board") efforts to accelerate its election processes. If you recall, in 2011 the Board published its final rule, which then was rejected by a federal district court because the Board lacked the quorum necessary to adopt such a rule. In December, 2013, the Board voluntarily dismissed its appeal of that court decision, thus clearing its decks for another try. Then on February 5, 2014, the Board published a Notice Of Proposed Rulemaking ("NPRM") in the Federal Register. That proposed Rule was virtually identical to the one originally proposed in 2011.

On, December 12, 2014, the Board announced that it has adopted the proposed Rule as a Final Rule. The rule was published in the Federal Register on December 15, and will take effect on April 14, 2015.

The Rule is aimed at significantly reducing the time between the filing of an election petition and the election itself. The result is that elections that once were held on average 38-43 days after an election petition was filed are likely to take place much sooner. Additionally, hearings concerning the appropriateness of a particular bargaining unit will likely conclude in significantly less time, thereby resulting in election time frames much shorter than those which most employers have experienced over the years. Ultimately, employers will have significantly less time to react to a petition, evaluate and argue over the structure of the appropriate unit in which to hold the election, and to explain their position.

The Board's position is that elections were unduly delayed due to these hearings and appeals. Employer organizations generally take the position that delays occur in only a small minority of cases, and hence there is no need to change the timelines, particularly where the tradeoff is that the employer's ability to express its views is greatly reduced.

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It is likely that various businesses and business organizations will file suit to enjoin enforcement of any Final Rule on various constitutional and other grounds.

More and quicker elections means that now, more than ever, employers should consider some advance planning for the contingency of an election petition since the time frame to prepare and respond will be much shorter than it has been.

Below we outline the most significant changes included in the Final Rule:

- There is no right to a pre-election hearing
- Eliminates pre-election appeals of Regional Director decisions; all appeals are post-election
- Elections could be held within 25 days of a petition being filed
- There is no right to file briefs, that is up to the Regional Director
- Hearing officers can limit the scope of the issues at hearing
- Accepting post-election appeals is discretionary with the Board, rather than mandatory
- Hearings will be scheduled in seven days
 - Employers must disclose employee lists two days after a direction of election
 - Employee lists have to include not only name and address, but telephone numbers, e-mail addresses, work location, shift and job classification for each employee
 - Pre-hearing position statements by the parties are required on what the issues are and their position on them
 - Parties would be precluded from raising issues not contained in the position statement

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This Alert was prepared by Geoffrey P. Wermuth, a partner in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Wermuth, the attorney assigned to your account, or your own labor counsel.

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