



**Labor & Employment Alert
December 2011**

**National Labor Relations Board Issues Final Election Rule Aimed At
Quicker Elections**

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**NLRB Final Election Rule In Conjunction With The Board's Posting Rule Is
Likely To Result In More And Quicker Elections**

Today the National Labor Relations Board ("Board") published its final Election Rule in the Federal Register. The Final 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 recently experienced. 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.

The Final Rule is scheduled to go into effect on April 30, 2012. However, the U. S. Chamber of Commerce and the Coalition for a Democratic Workplace have already filed suit to enjoin enforcement of the Final Rule on various constitutional and other grounds. It is likely other groups will join or file their own lawsuits. The Board is supposed to have five members, but this Final Rule was issued on the authority of only two members. It is the position of many employer organizations that a rule change like this can only go into effect if a majority of a five person board approves it. This will likely be one area on which litigation challenging the validity of the Final Rule will focus.

We outline the most important changes included in the Final Election Rule on the bottom of the next page of this Client Alert.



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Update On The Board's Posting Rule

As we informed you in our November Client Alert, the Board's Posting Rule requiring the posting of employees' rights under the National Labor Relations Act in virtually every private-sector workplace in the country is scheduled to go into effect on January 31, 2012. In one of the two cases filed by business and other groups to enjoin that Rule, the Court heard summary judgment arguments last week. The judge in that case, referring to the issues as "complicated," asked the Board to delay implementation of the Posting Rule until she has ruled so she has an adequate opportunity to review the issues and write her decision. It remains to be seen whether or not the Board will comply with that request. We will keep you updated as events transpire.

More And Quicker Elections Anticipated

The combined effect of the Board's Posting Rule and the changes in the election process is likely to be both more and quicker elections. The rationale for the Posting Rule was to inform employees of their rights under the National Labor Relations Act of which they might be unaware, which may precipitate more elections. The goal of the Final Election Rule is to speed up the election process. 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.

Important Changes In The Final Election Rule

The most important rule changes are:

- 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 hearing officer
- Hearing officers can limit the scope of the issues at hearing
- Accepting post-election appeals is discretionary with the Board, rather than mandatory



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Absent from the Final Rule are other controversial provisions the Board proposed in June, 2011, although the Board continues to consider them. Those provisions include:

- Hearings scheduled in seven days
- Employers 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 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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