

Employers: Be Ready for a Union Ambush

Description

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On December 15, 2014, the National Labor Relations Board (NLRB) issued a final rule regarding representation case procedures to become effective on April 14, 2015. In doing so, the NLRB sought to update its rules to better reflect modern technology, uniformity across regions, and the elimination of unnecessary litigation and delay. The end result of such rules: the union election process is going to speed up, significantly, to the detriment of employers.

What does this mean to employers? With union elections now on a fast-track, employers will be forced to stick to a quicker timeline, ultimately affecting the employer's ability to run an effective campaign if they are not given the adequate time needed to respond. For example, the new rule results in elections occurring 10 to 21 days after a petition has been filed, eliminating the six-week window employers previously had to prepare for an election. Other significant changes include:

- Electronic submission of employee information (personal phone numbers and e-mail addresses in addition to employee name and home addresses) by employers to non-employer parties within two business days of the approval or decision directing an election
- Pre-election hearings will now take place within eight days after a hearing notice is served, with an employer's position statement due one day before the pre-hearing
- Board review of post-election issues is now discretionary
- More detailed information is now required for parties and prospective voters regarding the petition and the potential for an election
- Post-election, parties will only have seven days to file objections and offers of proof in support
- Written briefs are allowed post pre-election hearings only if the regional director determines they are necessary

With the new changes in place, employers should proactively prepare for a quicker union election process by altering their practices, including but not limited to:

- Implementing mechanisms to detect and react to union activity
- Developing an internal rapid response team to respond to petitions
- Modifying campaign strategies
- Preparing campaign materials for locations at risk for unionization

But wait!!! Since the issuance of this ruling, several business trade groups, including the U.S. Chamber of Commerce, the Coalition for a Democratic Workplace, the National Association of Manufacturers, the National Retail Federation, and the Society for Human Resource Management, have filed a lawsuit in the hopes of blocking the NLRB's new rule. The pro-business trade groups believe that this shortened timeline prevents employers from effectively communicating with employees and that the final rule is a violation of an employer's First Amendment rights. Be sure to stay tuned!

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