



New NLRB Rule Speeds Up Union Election Process

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On August 25, 2023, the National Labor Relations Board (NLRB) published a new rule for representation case procedures. This rule goes into effect on December 26, 2023. The rule reinstates the 2014 ambush-style representation election rules. Make sure your company is prepared well ahead of time to ensure that your interests are protected.

Background

A representation case is a legal procedure where employees, unions and employers file petitions to have the NLRB conduct an election to determine if employees wish to be represented for purposes of collective bargaining with their employer.

In most cases, the parties agree on the voting unit and other election-related issues. But if they don't, the NLRB holds a pre-election hearing to determine whether an election should be held. A regional office of the NLRB conducts an election and, if necessary, holds a post-election hearing to resolve challenges the results of the election. The NLRB promulgates rules setting forth the procedures for representation cases.

What Employers Need to Know

The effect of the rule is to speed up the election process. Here are five changes all employers should know:

- 1. Timeline to Post Notice of Petition for Election.** Currently, employers have five business days to post a Notice of Petition for Election after receiving a Notice of Hearing. The new rule reduces the time for employers to post to two business days.
- 2. Pre-Election Hearing Schedule.** Now, the pre-election hearing would be scheduled to open 14 business days from service of the Notice of Hearing. Parties currently have eight business days after service of the Notice of Hearing to submit a Statement of Position. New rule changes both the opening of the pre-election hearing and the deadline for submission to eight calendar days.

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- 3. Limitation on Postponement.** Under the current rules, regional directors may postpone a pre-election hearing for an unlimited amount of time. Now, regional directors are limited to a two-day postponement upon a showing of special circumstances.
- 4. Limited Issues at Pre-Election Hearing.** The new rule limits pre-election hearings to only questions of whether representation exists. Disputes concerning employee eligibility must now be litigated after elections.
- 5. Elections Held As Soon As Possible.** Regional NLRB directors must schedule election for “the earliest date practicable” after a decision and direction of an election. While the current rules contain the same language, the new rule eliminates the mandatory 20-day waiting period between the direction of election and the election.

Be Prepared

When facing unionization efforts, employers must be familiar with all relevant representation case rules, procedures, policies and requirements. Failure to comply can have serious consequences and can result in further litigation, expense, and uncertainty. We recommend that employers consult experienced labor and employment attorneys well in advance of any possible representation case petition.

If you have any questions or are interested in learning more about NLRB rules and compliance and how they affect your company, reach out to the Foster Swift Collins & Smith employment law team.