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NLRB Announces New Rules Shortening Election Proceedings

In mid-December, the National Labor Relations Board (the "Board") adopted a final rule streamlining the elections process. The new rule was adopted by a 3 2 vote, with Members Miscimarra and Johnson dissenting. The changes will go into effect on April 14, 2015, absent legal challenge. The Board passed a similar rule in 2011, but in 2012 courts overturned the rule on procedural grounds.

The likely effect of the changes will be to dramatically shorten the time period between when a petition is filed and when an election occurs. Employers may now have as few as 20 days to respond to a representational petition, rather than the more typical 42 days. Specific changes include:

- Election petitions may now be filed electronically.
- Within two days of the service of the election petition, an employer must post a "Notice of Election," which will provide information to employees about the election process.
- Within seven days of the filing of an election petition, the employer must file a "Statement of Position," which must include a list of potential voters, job classifications, shifts and work locations. If the employer fails to raise certain issues in the Statement, it may be foreclosed from raising those issues later in the proceedings.
- The Board will schedule pre-election hearings within eight days of the filing of the election petition. The scope of the pre-election hearing will be limited to whether it is appropriate to conduct an election; arguments regarding eligibility to vote in the election will not be allowed until postelection proceedings.
- Parties will no longer be allowed, as a matter of course, to submit a brief to address pre-election issues.
- Elections will no longer be automatically stayed to give the parties time to decide whether or not to appeal pre-election determinations. Instead, most issues will be subject to review after the election.
- Employers will now have just two days (instead of the current seven days) after the order directing an election to submit the Excelsior List, which must include email addresses of eligible bargaining-unit employees.
- The Board is no longer required to review postelection appeals.

If you have questions about the new election procedures, contact your Reinhart

POSTED:

Jan 19, 2015

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