



THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

CLIENT NEWSLETTER

SPECIAL BULLETIN

The NLRB Publishes Final Rule That Will Change Union Election Procedures

On Wednesday, December 21, the National Labor Relations Board (“NLRB”) announced that it has adopted a final rule (“the rule”), effective April 30, 2012, amending its election case procedures.¹ The rule will be published in the Federal Register on Thursday, December 22. A lawsuit seeking to block implementation of the rule has already been filed by the U.S. Chamber of Commerce in federal court in the District of Columbia.

As we noted in our December 2, 2011, Special Bulletin, the rule will dramatically speed up the union election process, will inevitably hamper an employer’s ability to express its views regarding the election decision, and will prevent employers from challenging certain aspects of union elections until after the election has taken place.

Specifically, the rule, among other things, (1) eliminates the present 25-day waiting period for the scheduling of elections that allows a party to file a pre-election request for review, thereby placing a great deal of discretion in the hands of each NLRB Regional Director to conduct very speedy elections; (2) revises the law to state that a pre-election hearing may be held only to determine if a question concerning representation exists, which will result in fewer pre-election hearings and thus quicker elections; (3) eliminates the right for parties to seek pre-election reviews by the NLRB, meaning that almost all appeals (including appeals related to election conduct) will be permitted only after the election is conducted; and (4) even permits the NLRB wider discretion to reject post-election appeals that it determines do not “present a serious issue for review.”

The rule, however, does not include several provisions that were in the NLRB’s original proposal. Specifically, this rule drops, among other provisions: (1) a requirement that any pre-election hearing be held within seven days after service of the notice of hearing; (2) a requirement that voter lists supplied by the employer to the union include employee email addresses and telephone numbers; (3) a requirement that the employer supply the voter list within two days after the direction of election (presently seven days); and (4) permission for unions to file representation petitions and related documents electronically. These provisions were included in the NLRB’s June 22, 2011, Notice of Proposed Rulemaking, but were dropped after a massive public response that included over 65,000 sets of written comments regarding the proposed changes. The discarded changes are not necessarily dead forever, but are instead subject to further consideration by the NLRB. The fact that those changes were not included in the present rule, however, is certainly a positive development.

¹ In a December 2, 2011, Special Bulletin, we advised that the NLRB had passed a resolution adopting changes to its election procedures and that it was in the midst of drafting the now-published final rule. The full text of the final rule and related materials, which cover 204 pages, are available for review at https://www.nlr.gov/sites/default/files/documents/3240/nfrmfinal_0.pdf.

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As we previously noted, this rule is certainly not good news for employers, and is clearly designed to assist unions in their organizational campaigns. The Kullman Firm will continue to monitor the implementation of the rule and the status of any related litigation. In the absence of any litigation successfully challenging the rule's legality, the new election procedures will take effect at the end of April. In view of that fact, employers may well wish to consider placing much greater emphasis on the training of managers and supervisors on how to lawfully maintain a union-free workplace, and perhaps even articulating their views on the subject to nonsupervisory employees as well.

The Kullman Firm regularly counsels employers regarding labor and employment issues such as the challenges posed by this NLRB resolution. If you have any questions regarding this or any other labor and employment issue, please contact the Kullman attorney with whom you customarily work.



Management Resource in Labor and Employment Law

1600 Energy Centre, 1100 Poydras Street / New Orleans, LA 70163 / 504.524.4162
Suite A, 4605 Bluebonnet Boulevard / Baton Rouge, LA 70809 / 225.906.4250
Suite 340, 600 University Park Place / Birmingham, AL 35209 / 205.871.5858
Suite 704, Court Square Towers, 200 6th Street North / Columbus, MS 39701 / 662.244.8824
Suite 120, 1640 Lelia Drive / Jackson, MS 39216 / 601.366.2990
1100 Riverview Plaza, 63 S. Royal Street / Mobile, AL 36602 / 251.432.1811

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