

Ask an Attorney!!

Here's an opportunity for SI-SHRM members to have their questions regarding labor and employment issues answered by our friends at the law firm of Fisher & Phillips, LLP.

We will select one or more questions (as space allows) to be answered in each issue. The attorneys will answer the published questions, but it is important to remember that their answers are based on the limited facts presented in the questions and cannot be regarded as specific legal advice to any particular person or entity.

If you would like to *Ask an Attorney*, send your question to jschroeder@accentonline.com. Please do not include the actual names of any persons to whom your question may relate (e.g., substitute "Mr. X" in place of a person's actual name). The names of questioners and their companies will not be published or revealed to the attorneys.

Do YOU have a Best Practice you want to SHARE?

Send one of your company's best practices to Jennifer Pineda by the 25th of the month to share it with fellow HR members within the SI-SHRM network!!!



Legal Alert / Resources



National Labor Relations Board "QUICKIE" Election Procedures

Submitted by Fisher & Phillips LLP

On December 22, 2011, the National Labor Relations Board published a final rule implementing sweeping changes to its long-standing procedures regarding the conduct of union representation elections. The below final changes were hastily published as the Board was expected to drop to only two members (thus losing its quorum and its legal authority to act) on December 31, 2011. Absent judicial or legislative intervention, the final rule will take effect on April 30, 2012.

What's In The Final Rule

The final rule amends the Board's election rules in eight different ways:

- Amendment 1:** Expressly states that the purpose of a pre-election hearing is "to determine if a question of representation exists."
- Amendment 2:** Authorizes hearing officers to exclude evidence regarding voter eligibility and inclusion issues (including whether individuals are supervisors).
- Amendment 3:** Affords hearing officers discretion to permit or not permit post-hearing briefs and to otherwise control the content and timing of any post-hearing briefs permitted to be filed.
- Amendment 4:** Eliminates parties' right to file a pre-election request for review of a regional director's decision and direction of election, instead deferring all such requests until after the election, when they could be consolidated with any request for review of a regional director's disposition of post-election disputes arising out of challenges or objections.
- Amendment 5:** Eliminates the recommendation that regional directors generally schedule an election no sooner than 25 days after the direction of election so that the Board has an opportunity to rule on any request for review that may be filed. (The 25-day period was eliminated on the theory that such time is no longer necessary because Amendment 4 has eliminated the parties' right to file pre-election requests for review).
- Amendment 6:** Substantially narrows the circumstances under which a request for special permission to appeal to the Board will be granted.
- Amendment 7:** Creates a uniform procedure for resolving election objections and potentially outcome-determinative challenges in stipulated and directed election cases and provides that Board review of any remaining post-election disputes is discretionary.
- Amendment 8:** Eliminates portions of the Board's regulations that are deemed to be redundant.

What It Means For Employers

Although noting in the final rule requires regional directors to expedite the election process, many expect the final rule will result in most directed elections occurring within 15-20 days of the date of petition. (The median period between petition and election under the former rules was 38 days). A shortened election cycle places most employers at a serious disadvantage when it comes to educating employees on the benefits of remaining union free and training their supervisors to lawfully and effectively respond to organizing.



Inspira- tional Corner

"A MAN , AS A GENERAL RULE, OWES VERY LITTLE TO WHAT HE IS BORN WITH - A MAN IS WHAT HE MAKES OF HIMSELF."

~ Alexander Graham Bell

Looking to Get Certified?

Ivy Tech is offering the HR Certification class from February 22nd to April 25th.

This class is being co-taught by SI-SHRM's Certification Director, Ed Carpenter: and say something like "Even if you don't take advantage of the Ivy Tech Class, there are other providers listed on our website and the important thing is to "Get Certified, Get Noticed"

More information contact Angela Henderson at 812-246-3301, ext. 4704 ahenderson74@ivytech.edu



Legal Alert (Continued)



National Labor Relations Board "QUICKIE" Election Procedures (Continued)

Submitted by Fisher & Phillips LLP

The expected (and intended) effect of the new rule is to accelerate the election process. This will deprive employees of sufficient time in which to become educated regarding the pros and cons of union representation, thus forcing them to make a one-sided, uninformed choice as to whether they want to be represented by a union. This, obviously, works to a union's advantage. The union will have plenty of time to fill employees' heads with propaganda before the employer even knows union activity is afoot. The employer will then have just a few days in which to educate the employees regarding the truth about unions and help them understand them understand the difference between what unions promise and what they can actually deliver.

Worse yet, the new rule will essentially compel employees to cast their ballots before any lingering voter eligibility issues are resolved, effectively precluding them from understanding the full scope and ramifications of their decision.

Will The Final Rule Survive Legal Challenge?

The U.S. Chamber of Commerce and the Coalition for a Democratic Workforce immediately filed a complaint against the Board in federal court, seeking to invalidate the final rule and to enjoin the Board from enforcing it. Senator Mike Enzi (R-Wyo.), ranking member on the Senate Health, Education, Labor and Pensions Committee, has since announced that he will challenge the "ambush elections" rule pursuant to the Congressional Review Act, which permits either the Senate or House to introduce a joint resolution of disapproval to stop a rule's implementation. Only time will tell whether these or other potential challenges will delay or invalidate the final rule.

What Should Employers Do?

Prudent employers should assume the rule will take effect as planned, and should immediately begin preparing for its potential consequences. It is fair to assume that unions will intensify their organizing efforts in the coming months, and will be standing on "go" with signed authorization cards ready come April 30. Even under the current 38-day period, it is challenging and very burdensome for most employers to mount a lawful and effective employee education campaign in response to union organizing. It would be virtually impossible for any employer to prepare and implement an effective employee education campaign, from scratch, in 15-20 days. Consequently, employers who may be targeted by a union organizing campaign should start taking action now so that they, too, will be ready to go on April 30, should that be necessary. Preparation includes establishing appropriate policies, practices and procedures before union activity begins, so you can continue them if/when organizing begins. Preparation also includes having a written 15-20 day campaign plan "on-the-shelf" and ready to go, along with all the necessary speeches and materials needed to educate employees and respond to union propaganda. Perhaps most importantly, preparation includes ensuring that supervisors and managers are properly trained to lawfully and effectively implement your plan. It was always a good idea for employers to be prepared for union organizing, but the new rule will make the adverse consequences of unpreparedness more likely.

Note: The foregoing provides an overview of certain legal issues. It is not intended, and cannot be construed, as legal advice for any purpose. For more information contact an attorney in Fisher & Phillips' Louisville, KY Office at (502) 561-3990.

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