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## *NLRB's Proposed Rules Would Speed Up Union Election Process*

On June 22, 2011, the National Labor Relations Board (“NLRB”) published a Notice of Proposed Rulemaking that would speed up the union representation process and provide unions with greater access to employees. As predicted, the NLRB is attempting to accomplish through rulemaking some goals that could not be accomplished when the Employee Free Choice Act (“EFCA”) stalled in Congress. The NLRB is accepting comments about its proposed rules until mid-September, and such rules could potentially be adopted shortly thereafter.

By way of background, the National Labor Relations Act (“NLRA”) grants employees the right to join unions and bargain collectively, and the NLRB oversees, among other issues, the union organizing and election process. When a sufficient number of employees sign union authorization cards stating their interest in having a union represent them (this often happens without an employer’s knowledge), the union in question will file a petition with the NLRB to have an election, and an election would normally occur between one and two months later.

The most significant effects of the proposed rules are that they would do the following:

- Require that a pre-election hearing to address any disputed matters that require resolution before scheduling the vote be held within seven days after a hearing notice is served, and that any post-election hearings occur within 14 days after the votes are counted, thereby decreasing employers’ time to strategize and prepare for such proceedings.
- Defer any litigation relating to voter eligibility involving less than 20 percent of the bargaining unit until after the election. Such disputes currently often delay elections until resolved.
- Permit election petitions, election notices and voter lists to be distributed electronically.
- Require employers to produce to a union a preliminary list of employees eligible to vote at the opening of the pre-election hearing. Currently, such information is produced later in the process.

### Related practice areas:

[Labor and Employment](#)

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- Require production to a union of the final voter list within two days after the direction of the election, as opposed to the current seven-day requirement.
- Require employers to produce employees' e-mail addresses and phone numbers, when available, on the final voter list. Currently, only employees' home addresses are required to be disclosed to a union, and the proposed change would enable unions to communicate with employees in a less expensive, more effective and more timely manner.

Unions, which have long complained that the time between a petition and an election provided employers with an opportunity to implement an anti-union campaign and “coerce” employees to vote against union representation, have applauded the NLRB’s proposed rules. On the flip side, a dissenting NLRB member and some congressional opponents have expressed concerns regarding the proposed rules, including that they would infringe upon employers’ right to engage in free speech and employees’ rights to privacy and free choice.

If the proposed rules are adopted, employers would have a limited opportunity to educate employees **after** an election petition is filed. To be prudent, employers should now evaluate their vulnerability to union organizing, be on the lookout for organizing activity, and consider providing training and disseminating information on a regular basis to ensure that employees have the information they need to evaluate union propaganda and organizing efforts **before** they sign a union authorization card and/or an election petition is filed.

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