

THE ZAPPIA LAW FIRM

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SPECIAL UPDATE

PRIVATE AND PUBLIC EMPLOYERS

February 20, 2015

CONGRESSIONAL REPUBLICANS AND BUSINESS GROUPS CHALLENGE

THE NLRB'S NEW RULE TO SPEED UP UNION ELECTIONS

Background:

On December 12, 2014, the National Labor Relations Board adopted a final rule amending its representation-case procedures to modernize and streamline the process for resolving representation disputes. The rule will take effect on April 14, 2015.

The Board believes the rule will enable the agency to more effectively administer the NLRA by modernizing its rules in light of modern technology, making its procedures more transparent and uniform across regions, and eliminating unnecessary litigation and delay. The Board believes that with these amendments, the agency will be better able to fulfill its duty to protect employees' rights by fairly, efficiently and expeditiously resolving questions of representation.

In sum, the final rule:

- Provides for electronic filing and transmission of election petitions and other documents;
- Ensures that employees, employers and unions receive timely information they need to understand and participate in the representation case process;
- Eliminates or reduces unnecessary litigation, duplication and delay;
- Requires that additional contact information (personal telephone numbers and email addresses) be included in voter lists, to the extent that information is available to the employer, in order to enhance a fair and free exchange of ideas by permitting other parties to the election to communicate with voters about the election using modern technology; and
- Allows parties to consolidate all election-related appeals to the Board into a single appeals process.

Challenges To The New Rule:

Congressional Republicans announced a Congressional Review Act resolution on Monday in an effort to stop the new union election rule from being implemented. They take issue with the new rule for multiple reasons, including: (1) it forces a union election before an employer has a chance to figure out what is going on, by allowing a pre-election hearing to begin only 8 days after service of notice of the hearing;

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and (2) it puts employees' privacy at risk by requiring employers to provide personal information, including email addresses, phone numbers, shift hours and locations to union organizers.

In addition to the Republican Congress' efforts to prevent implementation of the rule, two lawsuits challenging the rule have also been filed. The Associated Builders and Contractors of Texas Inc. and other business groups have filed a complaint against the NLRB in the U.S. District Court for the Western District of Texas. This suit contends that the new rule violates both the NLRA and the Administrative Procedures Act. The U.S. Chamber of Commerce is also challenging the rule in federal court in Washington D.C.

Counsel for Plaintiffs in these matters hope the NLRB will voluntarily delay the April 14, 2015 effective date of the new rule pending the outcome of the lawsuits, but the Board has not agreed.

We will keep you apprised.

Link to a comparison table between the current rule and the new rule

<http://www.nlr.gov/sites/default/files/attachments/basic-page/node-3317/Comparisontable.pdf>