



Legal Alert: National Labor Relations Board Submits Request for Information on Possible Implementation of Off-Site Voting in Representation Elections

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On June 9, 2010, the National Labor Relations Board (NLRB) issued a request for information (RFI) through the federal government's procurement website, in which the NLRB announced that it "is seeking industry solutions regarding the capacity, availability, methodology and interest of industry sources for procuring and implementing secure electronic voting services both for remote and on-site elections." (You can find the RFI in its entirety [here](#).) More specifically, the NLRB has listed its requirements as "the acquisition of electronic voting services to support conducting secret-ballot elections to determine representation issues." The RFI goes on to note that the NLRB requires "a proven solution that supports mail, telephone, web-based and/or on-site electronic voting." Significantly, the NLRB has placed the deadline for responses to the RFI on June 29, 2010. This appears to indicate that the NLRB seeks to move quickly on this matter if it receives the information it is seeking.

This RFI demonstrates the NLRB's intent to pursue the possibility of altering the representation process in a dramatic manner through a shift away from the traditional, on-site, secret-ballot election. While the National Mediation Board (NMB) has engaged in off-site voting in representation elections for some time, originally through mail-in ballots and currently through its Telephone Electronic Voting system and internet voting system, off-site voting is far more practical with respect to the industries the NMB covers – railroad and airline – due to the far-ranging geographic area covered by single representation elections. Conversely, the representation elections that the NLRB oversees are nearly always limited to single-site facilities or several facilities that have extremely close geographic proximity.

While a shift away from the on-site, secret-ballot election makes little sense with respect to the NLRB representation election process, the potential for such a shift does create great concern for employers and employees alike. The primary goal of the on-site, secret-ballot election is to ensure the presence of "laboratory conditions" in the election process – to ensure that the voters are not subject to outside influences at the time immediately leading up to, during, and immediately following the casting of the ballot. If the NLRB eliminates the on-site aspect of the secret-ballot election, the NLRB is also eliminating any guarantee that voters will not be subject to coercion, intimidation, or other outside influences as they cast their ballots.

Employers' Bottom Line

While the NLRB is not yet pursuing this shift in the representation election mechanisms through the rulemaking process, the short deadline by which the NLRB is seeking responses to its RFI suggests that rulemaking action may follow in the near future. Regardless of what steps the NLRB takes next, employers should keep themselves apprised of developments related to this matter to ensure they are best positioned moving forward.

Ford & Harrison will continue to provide information and guidance on this matter as further developments occur. If you have any questions regarding the RFI specifically or the issues addressed in this Legal Alert, please contact Tom Keim, tkeim@fordharrison.com, Lucas Asper, lasper@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.