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New Federal Regulations Target Employers

Recently, two federal agencies proposed a series of new regulations that, once again, have employers on the defense. Devised by both the National Labor Relation's Board (NLRB) and the Department of Labor (DOL) these new regulations include the creation of "SNAP" or "quickie" elections, as well as a massive expansion of employers and attorney's obligations to report "persuader activities." The bottom line? The current Administration is dedicated to advancing a pro-union agenda, even at the expense of employers and small business owners. Therefore, employers need to be aware of to what extent these proposed regulations will affect their operations.

Proposed National Labor Relations Board ("NLRB") Rules

The proposed SNAP election rules—the most significant changes to the National Labor Act since 1935—will significantly limit an employer's ability to communicate with its employees. This proposed change includes several key components:

- **Elections are currently held in the Hartford Region within 42 days from the filing of a petition**. Under the proposed rule an election could be held as early as 10 days from the filing of a petition. Consequently, during a union organizing drive, an employer could have only 10 days to communicate its position on a union to its employees.

- **Presently, an employer is obligated to provide the names and addresses of eligible employees in an election to the union within 7 days after a stipulated and/or directed election.** The proposed rule would reduce the 7 days to 2 days and require an employer to provide the email addresses and phone numbers of employees. Providing employees' email addresses and phone numbers to the union would raise significant privacy issues, and expose employers to possible civil litigation.

- T**he proposed rule will almost never permit pre-election litigation on which employees are to be included in the bargaining unit**. These issues are currently decided in a hearing before the election. Under the proposed rule, unless disputed eligibility issues are more than twenty percent (20%) of the bargaining unit, they will be resolved in a post-election procedure.

> This post-procedure would significantly hamstring an employer's abilities to communicate with their employees during the critical days before an election. For example, supervisors are exempt under the NLRA and often speak to employees on why it is not in their best interest, nor the best interest of the company, to have a union. Under the proposed rule, most employers will not have a legal determination on supervisory status prior to an election.
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> Indeed, as the solo Republican member of the Board, Hayes, noted: Make no mistake, the principal purpose for this radical manipulation of our election process is to minimize, or rather, to effectively eviscerate an employer's legitimate opportunity to express its views about collective bargaining.

If the NLRB's proposed changes become law, employers will likely find themselves at a tremendous disadvantage during union organizing drives.

Proposed Department of Labor (DOL) Regulations

As if these Board changes weren't damaging enough, the DOL has also recently proposed new regulations designed to shift the balance of labor relations power to organized labor

In the June 21, 2011 Federal Register, the Department of Labor, Office of Labor-Management Standards proposed revising and expanding the reporting requirements concerning persuader activities by labor relations consultants and attorneys.

If finalized in their present form by DOL, these rules would increase substantially the obligations of both employers and labor consultants and attorneys to report persuader activities that are directly or indirectly related to union organizing campaigns.

In the proposed rule summary DOL states that persuader activities may include:

> Training or directing supervisors and other management representatives to engage in persuader activity; establishing anti-union committees composed of employees; planning employee meetings; deciding which employees to target for persuader activity or discipline; creating employer policies and practices designed to prevent organizing; and determining the timing and sequencing of persuader tactics and strategies.

DOL further notes that seminars, webinars, and conferences offered by labor consultants and attorneys to employers would be reportable events under these proposed rules.

While DOL's rules would not regulate the content of any of the above described activities; it would obligate employers to report the identity of the consultants and attorneys and the amounts paid to them. Correspondingly, labor consultants and attorneys

would have to report their activities on behalf of these employers and the compensation they received.

Helping Organized Labor; Hurting America's Economic Recovery

With the proposal of these new regulations, its seems like the Obama Administration is strengthening its Big Labor allies at the expense of America's employers—a questionable strategy that seems destined to undermine this nation's fragile economic recovery while giving Unions the tools they need to stop their declining membership rates.

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