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NLRB's Controversial Issuance of Final Rules Set to Take Effect April 14, 2015

In recent [client alerts](#), we discussed the NLRB's issuance of final rules, set to take effect April 14, 2015, which will expedite the election process in union organizing campaigns. The NLRB has just issued a [fact sheet](#) summarizing the rules.

The rules are extremely controversial. For starters, they will shorten the timeline in union elections so abruptly that employers will typically have no time to respond. Employees will not be able to be informed about the vote they will be asked to cast.

Indeed, the rules are so controversial they have already met with challenges on nearly every front.

- Congress: Republican lawmakers in the House and Senate have begun an unusual procedure that can block the implementation of regulations under the Congressional Review Act. The block, even if successful in Congress, could face a presidential veto. This process has been successful in blocking regulations only once. In 2001, it was used to block workplace ergonomic regulations proposed by OSHA.
- Courts: A number of lawsuits have been filed arguing that the final rules violate not only employer rights but also the right of employees to be informed in a union organizing election. Lawsuits are pending in the District of Columbia and Texas.

Nonetheless, unless and until one of those challenges blocks the rules, they are set to take effect April 14, 2015. Employers who wish to avoid being "ambushed" or, as proponents of the final rules say, "expedited," with a union organizing campaign should immediately review policies, including their email systems policies, as well as their policies on solicitation, bulletin boards, access, social media, confidentiality, uniforms, Section 7 disclaimers and at-will employment and arbitration. Companies need to be sure their policies are reviewed right now against the latest developments in board law.

Additionally, employers who anticipate potential union organizing should immediately contact legal counsel to discuss their legal rights, including the need, now, before any organizing even begins to undertake appropriate educational efforts within their workforce. Once these rules take effect, there may not be sufficient time once a petition is filed for an employer to communicate with workers effectively.

This document is intended to provide you with general information regarding the NLRB's final rules. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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