

**IMPORTANT NOTICE FOR PRIVATE SECTOR EMPLOYERS  
SUBJECT TO THE NATIONAL LABOR RELATIONS ACT:**

**Amendments to Election Procedures, Rules and Regulations  
Under the National Labor Relations Act**

On November 30, 2011, the three current members of the National Labor Relations Board ("Board" or "NLRB") voted 2-1, along party-lines, to adopt a number of amendments to the Board's rules pertaining to union elections in the private sector. The amendments do not become final until a further vote is taken after the precise language to the amendments has been drafted. However unless Republican Board member Brian Hayes resigns from the Board or decides not to participate in the vote, the final vote to adopt the amendments will be taken before year end. These amendments constitute only a portion of the significant changes to the union election procedures proposed by the Board in June. The amendments are part of the Board majority's design to speed up the process between the time an election petition is filed by a union and the election is held. NLRB Chairman Mark Pearce proposed this limited resolution rather than the entire June proposal because the Board may lose a quorum when Member Craig Becker's term expires at the end of the year leaving vacancies in three of the five Board positions. The other portions of the original proposed rule changes will remain under consideration by the Board for future action if a quorum is maintained or achieved.

Under current election procedures an employer can raise a pre-election challenge to the scope of the proposed bargaining unit and/or seek a determination as to whether potential voters are supervisors or confidential employees not entitled to vote. The proposed amendments to the rules would delay the resolution of these issues until after the election is conducted in most cases.

In those cases where a pre-election hearing is held, the amendments would give the hearing officer discretion to deny the opportunity for post-hearing briefs and would eliminate the right to seek Board review of a regional director's decision prior to the election.

Another amendment would eliminate the policy that an election will not be held for at least 25 days following a regional director's direction of election in order to permit the Board to rule on any request for review.

The new rules would also give the Board discretion on whether to review a regional director's or judge's disposition of post-election disputes under certain circumstances.

In an effort to combat the Board majority's intent to shorten the election time frame and thereby inhibit an employer's ability to respond to a union petition, the House of Representatives has passed the Workforce Democracy and Fairness Act, H.R. 3094. That legislation would prevent these and other election rule changes. Unfortunately, it is extremely unlikely this bill will be passed by the current Democratic-led Senate.

Regardless of the outcome of these potential rule changes, employers should ensure that their supervisors and managers are adequately trained on how to recognize a potential union organizing effort and the lawful ways to respond. It is clear from these amendments and other

proposed rule changes that the time to respond when a petition is filed is going to be brief. Employers should be prepared for what have been coined as "ambush elections."

Information about the November 30, 2011 NLRB meeting can be found here:

<http://nlr.gov/node/3089>

If you would like further information regarding these election procedure amendments or have other employment related questions, contact Thomas E. Brydges, (716) 843-3812 ([tbrydges@jaeckle.com](mailto:tbrydges@jaeckle.com)) or any of our other Labor and Employment attorneys listed below.

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