
National Labor Relations Board releases new regulations aimed at altering 2014 regulations

Dec 17, 2019

On Dec. 13, 2019, the National Labor Relations Board (NLRB) released a series of new regulations intended to eliminate and significantly alter 2014 regulations put into place during Barack Obama's presidency. Beginning on April 16, 2020, new regulations will have a material impact on how long an employer has to respond to attempts to unionize the workforce and numerous procedural changes to the process of unionization. In summary, the NLRB has made the following substantive changes:

- **Pre-Election Hearing Schedule:** The time for the pre-election hearing extended from eight (8) calendar days from the Notice of Hearing to fourteen (14) business days.
- **Notice of Petition for Election:** An employer will now have five (5) business days to post and distribute the Notice of Petition of Election after service of the notice hearing, instead of two (2) business days.
- **Voter List:** Where previously an employer had two (2) business days to provide a list comprising the names and contact information for each eligible voter to the NLRB, the new rule gives employers five (5) business days after direction of the election.
- **Election Date:** The new rule keeps in place the same "earliest date practicable" language for election dates, but further states, absent a waiver from both parties, the election will not be scheduled before the twentieth (20th) business day after the date of direction of election.
- **Statement of Position:** Under the new rule, employers will have eight (8) business days after service of the Notice of Hearing to prepare, file, and serve the Statement of Position rather than having to file the Statement by noon the day before the scheduled hearing date. Moreover, where Unions were able to orally respond to the employer's Statement of Position at the start of the pre-election hearing, the new regulations require the Union to file a responsive Statement of Position three (3) business days after being served the employer's Statement.
- **Pre-Election Dispute Resolution:** Employers will now have the ability to litigate pre-election disputes over unit scope and voter eligibility under the new regulations instead of having to wait for those issues to be resolved after the election.
- **Post-Hearing Briefs:** The new regulation establishes the right of either party, rather than a discretionary grant by the hearing officer, to file a Post-Hearing brief within five (5) business days following a Pre-Election Hearing.
- **Certification of Results of Election:** If an employer files a Request for Review (an appeal) or there is still time for the employer to file a Request for Review, the Regional Director must wait until the Request is resolved or the time period to file has closed before certifying the election results.

The Agency's modifications to the representation-case procedures effectively reverse many of the regulations made under President Obama in hopes of balancing a process that was previously considered heavily weighted against the employer. Likely, employers will find comfort in the extended period where more time is allotted to evaluating and fully addressing developments to union petitions. Likewise, employees should benefit from the elongated process to collect, analyze, and determine information related to the impact of potential union representation. The full text of the final rule will be available on the NLRB's website on December 16, 2019, which can be viewed by clicking [here](#).

If you have any questions about the NLRB's new rule or representation case procedure compliance, you may contact Zachary M. Kimmel zkimmel@clarkhill.com | (215) 640-8526 or another member of Clark Hill's Labor and Employment Practice Group.