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Alerts

NLRB and DOL Propose Changes to Ease Union Organizing

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Employment Practices Special Alert

The National Labor Relations Board (NLRB) and the U.S. Department of Labor (DOL) have issued a proposed "one-two punch," which, if finalized, would significantly change the ground rules involved in union organizing of employees. The proposed changes would alter the process whereby a union can be selected by workers and would put an employer at a distinct disadvantage in communicating to its employees the reasons why a union would not be in their best interests.

For the past 70 years, the NLRB has conducted secret ballot elections of employees to determine whether they want a petitioning union to be their exclusive representative for collective bargaining purposes. There has generally been a period from one to two months after the union has filed its election petition with the NLRB in which the employer and union have "campaigned" among the employees and presented them with reasons and facts so that they vote on the union question on a fully informed basis. For many years, unions, which have lost many elections and seen declining membership during this time, have complained that they have been severely disadvantaged by the current process. They have urged the federal government to establish alternative processes by which employees either would not be entitled to an election or have a very short period of time before an election is held.

The NLRB has now proposed substantial changes in its election law procedures, which, if finalized, would substantially shorten the time period before a union election is held and afford the union greater communication access to the workers. Indeed, some have predicted that union elections could be scheduled from 10 to 21 days after a petition is filed, thereby substantially limiting an employer's ability to determine what issues led the employees to become interested in a union and to inform them about why a union is not needed and/or may be ineffectual in addressing those issues.

The NLRB's proposed changes place new restrictions on an employer's ability to litigate issues concerning which employees are eligible to vote. Employers will have to supply more information to the NLRB and the union concerning their eligible employees, including phone numbers, e-mail addresses, job classification, and work location and shift. There will be greater use of electronic communications to employees about the election by the NLRB, the union and the employer and earlier notification to the employees of the election and of their rights. Most time periods involved in the current processing of elections will

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be substantially shortened and/or eliminated, all with the effect of limiting the flow of balanced information to the employee voters.

The DOL, which regulates "persuaders," who advise employers about union organizing, is seeking to broaden the activities that will come within the scope of this regulatory scheme. This will then trigger the filing of detailed financial reports by "persuaders" and employers about such activities with the DOL. If the DOL proposals become final, they will severely handicap employers who are in need of advice during such periods. Additionally, the newly required financial reports would surely be used as propaganda against the employer in any union organizing campaign.

The end result of these proposed changes demonstrates an unbalanced approach to labor relations as it has been known in the United States for more than half a century. While there will be opportunities to submit public comment within 60 days of the publication of these proposed rules, employers should assume that most them will be finalized. Accordingly, employers need to begin preparing how they will respond in a rapid fashion to what is likely to be increased union organizing activity.

For further information, please contact your regular Hinshaw attorney.

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