



## Alerts

### NLRB Déjà vu: If At First You Don't Succeed...

February 11, 2014

*Employment Practices Alert*

In 2011, the National Labor Relations Board (NLRB) issued rules that were very favorable to union organizing, however, the federal courts invalidated those rules on procedural grounds. Last week, the [NLRB issued virtually the same rules](#), which propose to make the following changes: (1) The Excelsior List must include eligible employees' phone numbers and e-mail addresses, work location, shift and job classification in addition to their names and home addresses; (2) employers must provide the Excelsior List within two days of the election agreement or direction of election; (3) employers must post the initial Notice to Employees of Election; (4) employers must file a written statement of position regarding any issues to be raised for a hearing; and (5) pre-election hearings will not decide voter eligibility unless more than 20 percent of voters may be affected. The NLRB has requested comments on the proposed rules, and it intends to hold hearings in early April.

It remains to be seen whether the same parties that challenged the prior rules may challenge these rules based on the NLRB exceeding its statutory authority, or based on the First Amendment freedom of speech or Fifth Amendment due process. Employers that want to remain union-free will have to be even more vigilant if these pro-union rules go into effect.

#### Attorneys

Tom H. Luetkemeyer

#### Service Areas

Labor & Employment