



Alerts

Click to Agree? NLRB Will Accept Electronic Signatures in Union Organizing Efforts

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Employment Practices Alert

When was the last time you scrolled through an online statement of Terms and Conditions, just wanting to get to the bottom so that you can click “Agree” and move on with your day? By doing so, you legally committed to something, and you may not even know what it is. Would you believe that, as of September 1, a union could use a similar electronic form to gather employee signatures and trigger a representation election? Well, believe it.

“Effectively immediately, parties may submit electronic signatures in support of a showing of interest.” That’s the takeaway from a September 1, 2015, memorandum issued by the National Labor Relations Board’s General Counsel. In addition to explaining the reasons for the policy change, the General Counsel’s [7-page memo](#) lays out specific procedures and requirements for the use of electronic signatures by unions, employees, and employers when seeking to show support for adopting or removing a union, though some questions do remain. Employers therefore should be aware: showing of interest signatures may now be collected and submitted to the NLRB entirely electronically, including in the form of e-mail exchanges or internet sign-ups—provided that they meet the General Counsel’s standards.

Why now? The General Counsel was spurred to action by a final rule adopted by the NLRB in late 2014, which specifically charged him with determining “whether, when, and how electronic signatures can practicably be accepted” to support employees’ showing of interest in adopting a union. In making that charge, the NLRB was following Congress’ statement that agencies should strive to accept and use electronic forms and signatures whenever such means are cost-effective and secure. In addition to meeting those dual requirements, the General Counsel points out that the use of electronic methods by the NLRB will make signatures “easier to read,” will be consistent with “how many members of the public operate today,” and will allow employees to sign a card or list “in a private setting.”

What are the requirements? The General Counsel emphasizes that the new rules mirror the “traditional procedures” for protecting against and discovering fraud or forgery in non-electronic showing of interest petitions, which he states “have met the test of time.” (The “traditional” rules include that the signature must contain certain identifying information and that procedures for disputing and investigating authenticity must be followed.) Therefore, the General Counsel states, any electronic signature must specify: (i) the signer’s name,

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email address, and telephone number; (ii) the specific language to which the signer has agreed; (iii) the date of signature; and (iv) the employer's name. Also, the party submitting an electronic signature also must include a declaration testifying to the technology used and the veracity of the signature. Any electronic signature that meets these requirements will be presumed valid by the NLRB.

The General Counsel claims that the NLRB "is committed to ensuring the integrity of the process," and therefore states that these requirements for electronic signatures "are more stringent than what is currently required for non-electronic signatures." (He's right, in one sense—non-electronic signatures need only provide the signer's name and date.) Still, questions remain: what sort of "plausible evidence" can an employer provide when it suspects that an electronic signature may be of "questionable authenticity"? How will the NLRB (or anyone) validate an electronic signature by comparing it to a handwritten sample provided by the employer? What's to stop unions from creating quick, "click-through" electronic forms that meet these technical standards but do not actually require any knowing commitment from employees? Those questions will only be answered through future NLRB decisions. For now, employers should be aware of this new tool for unions to more quickly, efficiently, and secretly gather employee support.

Questions? Contact your regular Hinshaw attorney.