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Labor and Employment Alert: Click Here - NLRB Accepts Electronic Signatures For Election Petitions

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The National Labor Relations Board (NLRB) released its most recent in a string of pro-union decisions in the form of a new guidance memorandum from its General Counsel (GC). In the “quickie” or “ambush” election rulemaking, the NLRB had directed the GC to issue guidance on whether electronic signatures should be accepted for the showing of interest required of a union. This showing of interest is the threshold demonstration of employee support a union needs in order to get a secret ballot election.

The GC, in a memorandum released to the public earlier this month, has concluded that electronic signatures will be accepted for the showing of interest – effective immediately. An electronic signature can include electronic identification like an email exchange or sign-up via internet or intranet. An electronic signature must provide a Regional Director with “prima facie evidence (1) that an employee has electronically signed a document purporting to state the employee’s views regarding union representation and (2) that the petitioner has accurately transmitted that document to the region.” In such cases, the electronic signatures are presumed to be valid. The guidance establishes detailed requirements for electronic submissions and suggests some examples of acceptable submissions.

In a number of respects, the requirements imposed on electronic signatures exceed those imposed on non-electronic signatures. The GC acknowledges this, and explains that the additional safeguards are not hard to satisfy, and allow an employee who “did not intend” to electronically sign a document to make that fact known.

The new rule applies in all instances in which a showing of interest is necessary. For example, it applies to the showing that an employee seeking decertification of a union must make to initiate the NLRB’s election processes. But, since unions file the vast majority of petitions with the NLRB, and have the resources to establish e-signature processes, unions are the parties most likely to benefit from the new rule.

Among other issues that the GC's memorandum raises, the decision to accept electronic signatures could usher in a new approach to union organizing, and require compensating changes by employers on how to respond. Contact your Vorys attorney if you have questions about these new procedures, the issues they raise, or their impact on your business.