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NLRB Suspends New Election Case Procedures Rule in Response to Court Ruling

May 16, 2012

In a prior alert dated December 28, 2011, we reported that the National Labor Relations Board (the "NLRB" or the "Board") had adopted a controversial new rule amending its election case procedures. The new rule took effect on April 30, 2012. The changes encompassed by the rule have been of significant concern to employers, since they threaten to significantly shorten the average election period, from the current median of 38 days to only about 21 days. Critics say that the new rule is designed to foster "ambush elections" that will put employers at a disadvantage in the campaign process and will deprive employees of gaining a full understanding of the facts before an election.

On May 14, 2012, the U.S. District Court for the District of Columbia issued a decision invalidating the NLRB's new election case procedures rule. See *Chamber of Commerce v. NLRB.* Specifically, the court held that the new rule is invalid because the NLRB lacked the necessary quorum of three Board members when the rule was passed in December 201—only two of the three sitting Board members had actually voted to approve the rule.

While the decision is a victory for employers, it may be short-lived. As the Chamber of Commerce court specifically noted, nothing prevents the Board from voting on the rule again with a proper quorum.

At least for the time being, however, employers can rest easy. The day after the Chamber of Commerce decision, the NLRB announced that it has temporarily suspended the election case procedures rule. Board Chairman Mark Gaston Pearce noted that the Board is reviewing the court decision and considering how to respond. "We continue to believe that the amendments represent a significant improvement in our process and serve the public interest by eliminating unnecessary litigation," he said. "We are determined to move forward."

We will continue to monitor this developing area of law, and any further updates will be the subject of a future *Alert.* If you would like to discuss any of these issues or have questions about this *Alert,* please contact one of the attorneys listed above.

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