

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 2011—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.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

Lois Voelz Palo Alto	lvoelz@cooley.com +1 650 843 5058
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Frederick Baron Palo Alto	fbaron@cooley.com +1 650 843 5020
Michael Sheetz Boston	msheetz@cooley.com +1 617 937 2330

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.