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Labor and Employment Alert: New Rule on Union Election Procedures Will Speed Up Union Elections

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Last Friday, the NLRB issued its long-anticipated “ambush election” or “quickie election” rules. The rulemaking, which followed a **long and tortured procedural path**, is a major overhaul of the procedures used to conduct secret ballot, union elections. These elections are an important path to union representation, and they will now occur more quickly after the election petition is filed.

While the final rule did reject some of the most problematic pieces of the proposed rule, and in that sense allowed employers to dodge a bullet, the changes it did adopt are nonetheless quite significant. For example, major changes include:

1. Parties now must file election petitions and transfer representation-case documents electronically, as opposed to by fax or mail.
2. The non-petitioning party — usually the employer — must file a Statement of Position describing the issues with the bargaining unit that they want to raise at the pre-election hearing. Failing to raise an issue risks waiving that issue. The position statement must be filed within *seven days* of the filing of the petition.
3. The hearing itself must be scheduled within eight days of filing the election petition. Following the hearing, parties will no longer have the right to file written briefs, explaining the facts and the law supporting their position. Rather, those issues must be argued orally to the hearing officer, unless the regional director allows briefs.
4. Challenges to voter eligibility and inclusion issues affecting only a small percentage of the voting unit are delayed until the post-election hearing in case election results moot the issue. While the final rule rejected any uniform threshold for how large a percentage is necessary, it is still clear from this final rule that neither the employer nor the employees will know for certain who is and who is not part of the bargaining unit until *after* the election.
5. The employer must provide the NLRB *and* the union with a list of prospective voters' names, along with information about job

classifications, shifts, and location *before* the pre-election hearing. Once the election date is set, the employer must also provide a list with voters' personal contact information—including *phone numbers and emails*—to the union within two business days of the approval. The NLRB majority *rejected* any opt-out provision for those employees who would not want to receive emails.

6. The employer is now *required* to post a Notice of Petition for Election containing more detailed information on the filing of the petition and employee rights within *two business days* of service. Under current law, posting this notice is not required.

Whether business groups will challenge the rule is yet to be seen. Early comments, however, suggest that such a challenge is likely. For example, the U.S. Chamber of Commerce's [press release](#) indicated strong opposition, referenced its successful prior litigation against an earlier version of the rule, but stopped short of promising a lawsuit to challenge the rule.

The rule becomes effective on April 14, 2015. The NLRB fact sheet for the final rule can be found [here](#). For additional information about the final rule, or to discuss its potential effects, employers should consult their Vorys attorney or visit the firm's labor law blog, www.vorysonlabor.com.