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## Proposed Labor Rules Would Significantly Shorten Union Election Timelines and Expand Employer Reporting Requirements

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The National Labor Relations Board (NLRB) and the Department of Labor (DOL) recently proposed revisions to certain labor rules that would significantly impact both nonunionized and unionized employers. Although these rules are proposed and not considered final, employers should pay close attention as the agency rulemaking process moves forward through the summer.

### PROPOSED REVISIONS TO NLRB ELECTION PROCEDURES

Currently, most union elections take place within 56 days of the union election petition being filed by a labor union, and the median timeframe for these elections is 38 days. The NLRB is proposing to limit the timeframe to approximately two weeks after a union election petition has been filed. This proposal is significant to employers because the time between the date the petition is filed and the date of the election is often the only time an employer has to educate employees about unions and to express its views regarding unionization. By shortening the election timetable, employers are deprived of the time necessary to fairly present both sides of the representation question to employees, and employees may not have sufficient time to seriously weigh important considerations regarding union representation before an election vote.

The proposed rules also shorten the time — from 7 days to 2 — during which employers must submit to labor unions electronic lists of employees after an election petition has been filed and require employers to provide unions with employee telephone numbers, as well as their addresses. Thus, unions gain more access to employees for campaigning during an election. In addition, the NLRB is proposing to limit the avenues by which challenges to union elections may be filed.

More information regarding the proposed amendments to the NLRB election rules and regulations may be found here: <http://www.nlr.gov/node/525>.

## PROPOSED REVISIONS TO DOL "PERSUADER" RULES

The DOL is proposing to expand the circumstances in which consultant services provided to an employer, which are used to inform employees about their rights to collective bargaining, have to be reported by both the consultant and the employer under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA provides standards for the reporting and disclosure of certain financial transactions and administrative practices to the DOL by labor organizations and employers.

Current law requires an employer to report any agreement or arrangement with a third party consultant to the DOL when the purpose of the agreement or arrangement is to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute. In turn, a labor relations consultant is also required to report the agreement or arrangement to the DOL.

The DOL proposal seeks to clarify what type of employer activity is to be considered "persuader" activity that needs to be reported. Because of an "advice" exception to the reporting requirements, employers are not currently required to disclose any type of labor law advice that they receive from their outside counsels. The DOL proposal would significantly expand the scope of activity that needs to be reported while limiting the definition of what is considered labor law advice. The proposed reporting forms (LM-10 and LM-20) give examples of activities that are reportable "if the object thereof was, directly or indirectly, to persuade employees":

- Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees
- Drafting, revising, or providing a speech for presentation to employees
- Drafting, revising, or providing audiovisual or multimedia presentations for presentation, dissemination, or distribution to employees
- Drafting, revising, or providing website content for employees
- Developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness
- Training supervisors or employer representatives to conduct individual or group employee meetings
- Coordinating or directing the activities of supervisors or employer representatives
- Developing personnel policies or practices
- Conducting a seminar for supervisors or employer representatives

The proposed rules also carry both civil and criminal penalties for willfully failing to report "persuader" activities. This new interpretation and the related reporting requirements would likely have a chilling effect on employers in need of labor law advice during a union organizing campaign.

Finally, the proposed rule includes requirements for mandatory electronic filing (Form LM-21) for reporting receipts and disbursement and revises the form to include more detailed and intrusive reporting requirements. These amendments, as currently proposed, require employers to report their own internal costs, including wages paid to the employer's own managers and employees for time spent engaging in activities, such as planning employee meetings and deciding upon employment policies and practices, that are arguably designed to persuade employees about union issues. These reports are publicly available. If these rules are published and become final, it is expected that labor unions will use this information against employers during their aggressive organizing efforts.

More information regarding the proposed amendments to the DOL employer-consulting reporting requirements may be found here:

[http://www.dol.gov/olms/regs/compliance/ecr\\_nprm.htm](http://www.dol.gov/olms/regs/compliance/ecr_nprm.htm).

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Employers may wish to review their union avoidance strategies and consider steps to respond to these proposed rules, particularly the shortened timeframes for union elections and the persuader reporting requirements. For more information about the proposed rules, to inquire about union avoidance training for managers and supervisors, or for other labor relations questions, please contact one of the following attorneys in our [Labor & Employment Practice Group](#):

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