



Employee Privacy Concerns Spurs Proposed Changes To Union Election Rules

Insights

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The National Labor Relations Board has just proposed new union election rules that would reduce the information employers must provide to unions prior to elections and allowing absentee voting by workers on military leave. This is the third rule the Board has proposed during the Trump administration impacting elections of bargaining representatives. What do employers need to know about this proposal?

Privacy Concerns Addressed In Most Significant Portion Of Proposal

The most significant aspect of the Board's proposed rule is that it would eliminate the requirement that employers provide unions with workers' personal email addresses and telephone numbers before union elections. The Board pointed to employee privacy concerns as the motivation behind the proposed change.

The proposed rule would essentially rescind a change the Board made in 2014, returning to the rules which existed for nearly 50 years before that change. Specifically, *Excelsior Underwear*, 156 NLRB 1236 (1966) required an employer to provide a list of eligible voters containing eligible voting employee names and home addresses. In 2014, the Board modified this rule, requiring employers to provide "available" personal email addresses and home and cellular telephone numbers, as well.

The proposed rule announced today would not only return to the previously well-established standard, but ensure employee privacy and protection against abuse, fraud, hacking, identity theft, and phishing scams. According to the Board, such privacy interests and their protections should be entitled to greater weight than the 2014 disclosure requirements.

Proposal Also Includes Absentee Ballots For Workers On Military Leave

The proposed rule would also provide absentee ballots for workers who are on military leave. The Board determined that, in part due to the increased telecommunication capabilities, elections can accommodate workers who are on military leave without excessively delaying such elections. Other than during a brief period during World War II, the Board has consistently refused to provide absentee mail ballots to those on military leave.

The proposed rule would provide for a limited exception to the Board's general policy of not providing absentee ballots. The Board's rationale is that due to advancements in transportation and telecommunications, it is more efficient today to deliver mail and will be much easier to determine

the locations and addresses of eligible employees on military leave. Further, the proposed rule is more consistent with other laws and public policies which provide for special protections to service members, especially with respect to matters of employment and voting.

In the Notice of Proposed Rulemaking, the Board specifically invites comments on the structure of the absentee balloting, including: whether there should be a time limit on when an absentee ballot may be requested or returned so as to be counted and how the Board should secure the addresses of employees on military leave. In this fashion, the Board will be ensuring employees on military leave are given the maximum opportunity to participate in the election.

What's Next?

The proposed rule is being published in the Federal Register on July 29, after which it will undergo a 60-day comment period. The Republican-controlled Board's other election procedure rule changes have faced legal challenges, and this proposed rule may as well. Barring any successful legal challenge, the proposed rule would likely become final before the November elections.

Fisher Phillips will continue to monitor these developments at the NLRB and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author, or any attorney in our [Labor Relations Practice Group](#).

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