

News & Types: Employment, Labor & Benefits Update

Have You Implemented the Ever Ready Anti-Union Campaign?™

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Practices: Employment, Labor & Benefits

The National Labor Relations Board has issued final regulations helping unions to organize employees faster and easier. The regulations become effective on April 14, 2015, and court challenges are expected. However, companies need to know and plan actions in response to the new regulations.

Commentators are using the words "Ambush Election Rules" as if the sky is falling and the world is ending. The Board has made serious changes and companies must respond. Most of the new regulations shorten the period of time between the date a union requests an election by filing a petition and the date of the election. The regulations also address and try to end the delaying tactics used and abused by many lawyers representing companies. Since many unions do not file a petition unless they have support from over 70% of the employees, companies may have a more difficult time defeating a union drive. Companies will have less time to react to, educate and convince its employees to vote against the union.

What steps should companies implement?

We recommend that companies implement and continue to use the Ever Ready Anti-Union Campaign™ we have developed and which a number of our clients use. The Campaign includes:

1. Establish an Ever Ready Reaction Team™ to receive and respond to contacts by a union, government agencies and lawyers for employees, vendors, customers and third parties. Executives and especially foreign expatriates need to be extra careful not to voluntarily recognize a union orally during a meeting with a union's representatives.
2. Conduct an audit of the company's vulnerability. An audit could include surveys to determine the employees' attitudes toward the company and their supervisors as well as to identify issues which the employees believe may be solved by a union rather than by the company. An audit should also include discussions with the first-line supervisors regarding their perceptions, beliefs and attitudes about their roles.
3. Review and revise policies in the employee handbook and human resource procedures that protect the companies from unions and improve relationships with employees.
4. Create and maintain an issue-free, problem-solving environment to discourage employees from contacting an outside, third party to resolve their complaints. An issue-free workplace is a union-free workplace.

5. Train all managers and first-level supervisors. Supervisors need to understand their roles and special responsibilities, to identify and report the warning signs and to talk with employees without violating federal laws.
6. Determine the issues which will occur if there is an election. The Ever Ready Reaction Team™ needs to act the moment the company receives the union's petition for an election. There will be only 7 days before the hearing at the NLRB to determine who may vote in the election. Therefore, what is the "unit" and who is "eligible" to vote?

What are the new regulations?

The most important issue for an election is identifying who is eligible to vote in the election. For example, a union is attempting to represent the student football players at Northwestern University. The issue is whether student athletes are employees and, therefore, whether a union may represent them in bargaining with Northwestern about their wages and working conditions. Northwestern believes that the students are not employees. The Labor Board in Chicago held a hearing before the election, Northwestern's lawyers (one of whom was a regional director in the Labor Board's Chicago office) filed a post-hearing brief with the Regional Director in Chicago, and the Regional Director issued a "Decision and Direction of Election." Northwestern appealed to the Labor Board's offices in Washington D.C. The election took place, but the Labor Board impounded the ballots. No one knows the outcome of the election. The union's possible representation of the student athletes has been delayed. By the time the Labor Board in Washington, D.C. decides, Northwestern may have an entire new group of student athletes who may or may not support the union in the same way the student athletes supported the union when the union filed its petition for an election. Even if the union won the election and Northwestern must bargain with the union for a contract, the union may have a weaker position during the bargaining.

The new regulations will impact this scenario. Although there are exceptions in the regulations, the union must now immediately file the petition and the authorization cards the employees have signed rather than wait 2 days to file the authorization cards. These cards show that a sufficient number of employees support the union's petition for an election. The company must immediately post a Notice of Petition for Election. It informs the employees about the petition and the election. If the parties do not agree to schedule an election, the Labor Board will hold a hearing within 8 days, rather than as many as 15 days. One day before the hearing, the company must file a "Statement of Position" to the Labor Board regarding the issues. In general, the hearing officer will not allow the company to raise other issues during the hearing, and the hearing will continue day to day without continuances to another week or more. The company must also file a preliminary voting list, which gives the union more time to contact and convince the employees to vote for the union. After the hearing, the Labor Board may deny the company's request to file a post-hearing brief with the regional director. Therefore, the regional director will issue his decision more quickly. Within 2 business days, the company must give the union a more detailed list of all voting employees, including their personal e-mail addresses as well as personal and cellular telephone numbers. The union has 10 days before the election to use the list to contact employees, but the union may waive this regulation. The company's ability to appeal to the Labor Board's offices in Washington, D.C. will be limited and the Labor Board will not automatically stop the election from happening and impound the ballots. Therefore, rather than having an election within 5-6 weeks currently,

elections under the new regulations may take place within 3-4 weeks. Companies will have less time to educate employees about unions and convince them to vote in favor of the company.

For companies, it is never too late to act. A union needs only two employees to ask the Labor Board to certify the union as the employees' exclusive collective bargaining representative. Unions represent production and maintenance employees. However, unions also represent warehouse, trucking, office, technical and installation employees. Unions may also represent small groups of employees within a company rather than all of the employees working for a company.