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Union Elections And Employer Considerations During Social Distancing

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Despite the current pandemic, on April 3, the [National Labor Relations Board announced](#) that it was resuming union elections effective April 6. The announcement notes that during the current pandemic, the Regional Directors have discretion to decide “how” to [conduct union elections in a safe and effective manner](#). While no particular procedure has been mandated, to date, a number of regions have announced that they are conducting mail ballot elections only, presumably believing a manual election is infeasible given social distancing protocols.

Although we expect a slow return to “normalcy” during the summer months, the resumption of union elections, via mail balloting, combined with an increased militancy in various workforces, raises a host of issues employers must consider with respect to potential union organizing.

Mail ballot elections raise a number of challenges from employers, ranging from how employers can ensure a good voter turnout to simple campaign logistics, such as when and how to conduct 25th hour presentations – an event unlikely to occur immediately before balloting as would happen with manual balloting. In addition, nothing prevents union organizers from visiting employees at their homes after the ballots have been mailed to eligible voters. However, employers need to begin considering these issues now, as well as how they will run a union election communication campaign in this

era.

These are very real concerns for union-free employers, given that the current employee relations climate suggests that employers face a genuine risk of an increase in union organizing activity. For example:

- Tech companies are seeing an increase in union activity, evidenced by Kickstarter recently losing a union election. Large international unions have also reported an uptick in contacts from employees at tech companies.
- Union-free organizations have reported increased militancy among their workforces, ranging from concerted refusals to work to demands for “hazard” pay and even full-blown work stoppages.

Employers must consider planning for a potential new spike in union organizing as unions attempt to leverage employee fear, agitation, and potential distrust of the employer community. This includes reviewing your employee relations strategies, and potentially modifying your campaign playbook to deal with the current realities in the workplace. For example:

- If remote work is the new short-term norm, how will your employee relations infrastructure respond to union organizing activity? How will you effectively communicate your organization’s messaging?
- How will you receive feedback on the effectiveness of your organization’s messaging, particularly if social distancing limits your management team’s ability to conduct 1:1 and small group meetings?
- Is your organization’s response to the current pandemic consistent with your positive employee relations strategy, and if not, how will you respond to employee concerns in that regard?
- How will you conduct an effective campaign if a petition is received, including 25th hour considerations if a mail ballot election is ordered?
- Is your organization prepared for alternative communication methods, including virtual meetings?

The current pandemic has obviously raised a host of health, safety and employee relations considerations for all employers. However, employers also cannot lose sight of the fact that unions may leverage the current uncertainty into organizing advantages. Employers should review their employee relations strategies, taking into account potential new limitations on their ability to effectively communicate with their employees and a short-term reliance by the NLRB on mail ballot elections.