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Labor Board Dials Back Ambush Election Rules

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The National Labor Relations Board has finalized a rule making significant changes to its union election rules. These rules are expected to take effect April 16, 2020, 120 days after they are scheduled to be published in the Federal Register.

The current rules have been in place [since 2015](#), when the Obama board overhauled the union election process and instituted what many in the business community have referred to as “ambush” or “quickie” elections. Under that regime, an election could take place in as few as 13 days from the initial petition, leaving employers with [little time to prepare](#) for the election and ensure employees are fully informed.

Under the rules just issued, the election process will be much less of a rush. Here are some of the significant changes:

- There must be a period of at least 14 days from the time of the petition to the pre-election hearing. Employers must file pre-hearing position statements within eight days of notice of the hearing. This leaves about a week between the due date for the written position statement and the date of the hearing, which allows employers time to prepare for the hearing. In contrast, under the ambush election rules, hearings are scheduled within eight days of the notice of the hearing, with position statements due the day before the hearing. This requires employers to draft

position statements and prepare for the hearing simultaneously.

- Questions of unit scope and employee eligibility issues must be litigated at the pre-election hearing under the new rules. Under the current rules, these issues are postponed until after the election—again, to ensure the election would take place as quickly as possible.
- Elections expressly cannot take place fewer than 20 business days after the NLRB regional director issues his or her direction of election. That is, 20 full business days after the regional office issues its decision on the issues presented in the pre-election hearing. This will allow a full and fair opportunity for both employers and unions to campaign, and for employees to gather as much information as possible about their choices. Under the current rules, it is possible for elections to take place in as few as 13 days from the petition (depending on how quickly the regional office acts).

These changes address what many see as the current system's undue preoccupation with holding an election as quickly as possible. The new rules will allow employers to focus on litigating unit scope and eligibility issues, achieve a resolution to those issues, then have a period of at least 20 business days to campaign prior to the election.