



Mail It In! NLRB Sets Standards For Mail-In Ballot Union Elections During Pandemic

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In a recent decision, the [NLRB set forth a framework](#) to help Regional Directors determine whether union elections should be held in person or by mail.

As we previously reported, there has been a recent influx of [mail-in ballots in union elections](#) due to the COVID-19 pandemic. The National Labor Relations Board (NLRB) has given Regional Directors discretion on how to conduct union elections during the pandemic. Since March, approximately 90 percent of elections have been conducted by mail.

In its [Aspirus Keweenaw](#) decision on Nov. 9, the Board identified six situations which, when one or more is present, will favor conducting the election by mail. The situations are:

1. The agency office tasked with conducting the election is operating under “mandatory telework” status
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders

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4. The employer fails or refuses to commit to abide by [GC Memo 20-10](#), *Suggested Manual Election Protocols*
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status
6. Other similarly compelling circumstances

This decision will provide much needed guidance to both Regional Directors and employers on the circumstances in which mail-in ballot elections are appropriate. Regional Directors will now have some boundaries that frame their decision-making on how to conduct an election, and employers have some guidance on how to assess whether a manual, in-person election is feasible at their workplace in the face of a union campaign.