



Federal Judge Strikes Down NLRB Election Rule

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The NLRB's new election rule, set to take effect June 1, 2020, was struck down by a federal judge after a challenge to the rule by the AFL-CIO. Back in December, the NLRB issued the rule without first releasing a proposed rule for public comment. The new rule was welcome news to employers, as it [dialed back](#) the NLRB's infamous 2015 ambush election rule by extending several procedural deadlines and allowing for more time between a union petition and election. The new rule also gave employers more opportunities to challenge election issues during the election process.

After the [AFL-CIO filed suit](#), arguing the NLRB should have followed the notice and comment procedure under the Administrative Procedure Act, the [NLRB delayed the implementation](#) of the rule from April 16 to June 1. Just two days before the rule was set to take effect, a federal judge agreed with the AFL-CIO that parts of the rule were substantive rule changes that must follow the notice and comment procedure. The judge thus struck down portions of the rule, details of which will be forthcoming in an opinion from the court, and sent the remainder of the rule back to the NLRB. If the NLRB wishes to implement the stricken portions of the rule, it will need to do so by following the notice and comment procedure.

The fate of the rule is up in the air, but if the NLRB sends the rule through the notice and comment rulemaking procedure, that review period must last at least 60 days.

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