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The National Labor Relations Board Issues Proposed Regulations for the Union Election Process

On August 9, 2019, the National Labor Relations Board (the “Board”) released its proposed regulations, which, if implemented, would substantially change the Board’s current rules governing union elections. The proposed regulations address three existing Board policies: “blocking charges,” “voluntary bars,” and the process by which unions in the construction industry may establish majority support.

The Board’s existing “blocking charge” policy allows unions to block an election merely by filing a charge alleging unlawful conduct by the employer that would affect employee votes. Under the proposed rule, the election would go forward when charges are filed but the ballots would not be counted until the charge is resolved.

The Board’s current voluntary bar standard prevents employees from filing a decertification petition for a “reasonable period” after a union is voluntarily recognized by an employer. Under the proposed rules, this time period is substantially decreased and employees would be able to petition to decertify a voluntarily-recognized union within 45 days of its certification.

Finally, unions and businesses in the construction industry are permitted to negotiate agreements to govern employees without holding a union election vote (so-called “pre-hire agreements”). Unlike other agreements, however, these agreements do not bar union elections from occurring over the span of the next three years. Under the current rules, these agreements may be converted into contracts with a three-year election bar based solely on language within the collective bargaining agreement. The

proposed rules would require unions to have “extrinsic evidence” of their majority support before a conversion is recognized.

Takeaway for Employers

The Board’s proposed regulations are not yet law, and are open to public comment. However, if implemented, they would represent a considerable shift towards granting employees and employers the ability to challenge the legitimacy of unions as employee representatives.

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We are, of course, available to assist with any questions regarding these proposals and we will keep you updated as the rules move through the public comment period.

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