



NLRB Moves To Protect Employee Privacy (And More) During Union Elections

July 28, 2020 | [Labor And Employment](#), [National Labor Relations Board](#)



**David J.
Pryzbylski**
Partner

The National Labor Relations Board (NLRB) [has been active over the last few months](#) in terms of revising its [process and procedures](#) for union elections. The Board may not be done yet. Today, the agency announced it is [proposing two more amendments](#) to its elections rules.

According to the press release:

“The first amendment would amend the Board’s rules and regulations to eliminate the requirement that employers provide available personal email addresses and home and personal cellular telephone numbers of all eligible voters to the Regional Director and other parties during an election campaign. The Board believes, subject to comments, that elimination of this requirement will advance important employee privacy interests that the current rules do not sufficiently protect.

The Board also proposes an amendment providing for absentee ballots for employees who are on military leave. The Board believes, subject to comments, that it should seek to accommodate voters serving the United States in the Armed Forces in light of congressional policies facilitating their participation in federal elections and protecting their employment rights. The Board further believes, subject to comments, that a procedure for providing such voters with absentee ballots can be instituted without impeding the expeditious resolution of representation elections.”

This is a potential big development. Let’s take a look at each proposed

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amendment.

Employee Personal Contact Information

Prior to the 2015 “ambush election rule” going into effect, employers only needed to furnish the home addresses of eligible voters to the NLRB and unions prior to a union vote. The ambush election rule kept this requirement but also required companies to provide personal phone numbers (home and cell) as well as personal email addresses to the extent the company maintained them. The proposed change to revert to the prior rule and not require the disclosure of employee phone numbers and email addresses is significant for a couple of reasons.

First, many employees may not want their personal contact information disclosed to third parties, like unions, without their consent. This could be due to wanting to avoid incessant solicitation or just general privacy concerns. In fact, I’ve been involved in many campaigns where employees raised these concerns. Under the ambush election rule, however, there was no mechanism for employees to shield this information from being disclosed by the employer.

Second, the NLRB required companies to furnish all the personal contact information of workers even if companies did not house it in a central database – in other words, even if the employer did not formally track it. For example, the Board previously held [a company failed to meet its disclosure requirements](#) when it did not provide personal phone numbers of employees of which its various supervisors had possession. That is problematic for companies facing union elections – especially those of significant size. For instance, imagine a plant that does not formally track employee phone numbers and has 2,000 hourly employees as well as 150 supervisors/managers. Under the rationale of that NLRB case, that company would have to survey and gather any phone numbers of employees that any of the 150 supervisors/managers may have and failure to do so accurately could result in harsh penalties, such as a company union election victory being set aside. In short, this potential change could be a big win for employers as well as workers who want to keep their personal contact information private.

Absentee Ballots for Employees on Military Leave

Currently, there is no routine option available for employees out on active military leave to vote in a union election that could affect them. Accordingly, this proposed amendment would be a big change to help ensure those employees get a chance to have their say in any union election impacting their workplace. From a company perspective, to the extent this change goes into effect, employers will need to keep in mind that if they are campaigning and attempting to persuade their workers to stay union-free, they may need to find an effective way to convey their messages to employees away on military leave, given they would now have an opportunity to vote.

Stay Tuned

The NLRB is soliciting public feedback on these two proposed amendments. The public has 60 days to submit comments. We’ll keep you posted on the developments on this front.