

NLRB General Counsel Issues Guidance Memorandum on Representation Case Procedure Changes

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On April 6, National Labor Relations Board (NLRB or Board) General Counsel Richard F. Griffin, Jr. issued a lengthy [guidance memorandum](#) intended to explain modifications to the representation case processing procedures under the Board's Final Rule, adopted in December 2014. The General Counsel's guidance covers how representation cases will be processed from beginning to end, incorporating both the Final Rule changes and the procedures that remain unchanged. The Board's Final Rule goes into effect on April 14, 2015, and will apply to representation cases filed on or after that date.

Significantly, the General Counsel notes in the guidance that neither the Final Rule nor the memorandum "establishes new timeframes for conducting elections or issuing decisions." Rather, he notes that the Board will not be able to fully assess the Final Rule's impact on the overall timing of elections until after the Board accumulates some experience processing representation petitions under the Final Rule. The General Counsel instructs that "Regions should continue to process representation petitions and conduct elections expeditiously, consistent with the Board's Rules," and that where any inconsistencies exist, his Guidance Memorandum "supersedes the instructions in the Agency's manuals and other guidance, which will be updated in the near future."

The changes in the Final Rule have been called "ambush election rules," and dissenting Board members and objecting business groups assert the Final Rule diminishes the Board's role; offends employer due process, free speech, and privacy rights; and is generally unwarranted. The Senate and House voted, on March 4 and 19 respectively, to pass a resolution blocking the NLRB from implementing the new "quickie" representation election process. However, just last week President Obama vetoed the joint resolution. The President stated that he would not approve of any congressional legislation to overturn the NLRB's rules changes, which he considered "modest but overdue" reforms to streamline union elections in the private sector.

For more details on the Final Rule, see our client briefing, [NLRB Issues Final Rule Regarding Representation Cases](#).

The full text of the Final Rule is available [here](#). The General Counsel's guidance memorandum is available [here](#).

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