

# MARGOLIS EDELSTEIN

## EMPLOYERS: BEWARE THE 14<sup>TH</sup> OF APRIL

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## **EMPLOYERS: BEWARE THE 14<sup>TH</sup> OF APRIL**

On April 14, 2015, the new National Labor Relations Board (NLRB) Final Rule takes effect. This highly controversial Rule significantly shortens the time period between the filing of a union representation petition and the representation election. Although the Senate voted 53-46 on March 4, 2015, to abolish the Rule and sent the resolution to the House, President Obama has indicated that he will veto the bill. The votes are not there to override a veto.

Opponents of the Rule call it the NLRB “ambush election” or “quickie election” Rule. This is because under the new NLRB election procedures, the time from the filing of the representation petition with the NLRB to the election could be shortened from approximately 42 days to as little as 11 days.

Why is this so important to non-unionized employers? It’s because the shortened period of time from the filing of the petition to the election gives employers little time to persuade their employees that unionization is not in their best interest. The unions have long advocated for this Rule, and a majority of the NLRB members recently voted in favor of it.

Employers oftentimes have no knowledge of a union’s organizing efforts before the filing of the representation petition. By that time, the union could have spent considerable time in convincing employees through meetings, home visits, and other communications that they should join and vote for the union. Under the new Board Rule, once the petition is filed, an employer will be faced with the following tasks to be performed within a very short time period:

- Find an experienced labor attorney to guide the employer in what the employer is and is not permitted to do and say in opposing the union drive;
- Determine if the petitioned-for unit of employees is appropriate and which employees are and are not eligible to vote;
- Within 7 days of the filing of the Petition, file a “Statement of Petition” with the NLRB identifying all issues they have with the petition and providing a list of prospective voters with their job classifications, shifts, and work locations;
- Attend a pre-election hearing set 8 days from the filing of the petition to litigate issues needed to determine if an election is appropriate;
- Develop a strategy to convince the employees that unionization is not in their best interest;
- Implement its strategy against unionization with meetings of employees and other communications.

In view of this expedited election process, it is incumbent upon employers to immediately develop and implement prophylactic union-avoidance programs rather than rely upon an anti-union campaign that begins only after the filing of a representation petition. By that time, it may be too little, too late, to avoid unionization.

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The attorneys at Margolis Edelstein represent management in employment and labor law matters and are available to assist employers in matters before state and federal courts and administrative agencies. If you have any questions or would like more information on the issues described above, please contact any of the following Margolis Edelstein attorneys:



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