

President Vetoes Congressional Resolution Blocking NLRB Election Rule

On March 31, President Obama vetoed a joint resolution of Congress disapproving the new union election rule issued by the NLRB. The final rule, which is slated to take effect on April 14, will alter how the NLRB administers representation elections. While legal challenges to the new rule have been filed, the courts have not delayed its implementation. Employers should continue to monitor developments but prepare for the representation case procedures to change as scheduled.

Background

On December 15, 2014, the National Labor Relations Board (NLRB or Board) issued a [final rule](#) amending its procedures for union representation elections. The rule makes a number of significant changes to the Board's long-standing procedures governing union elections, including:

- Shortening the period between the filing of an election petition with the NLRB and the election
- Requiring employers to provide the union with employee information, including personal email addresses and phone numbers in addition to work schedules and locations
- Requiring employers to raise (or else waive) all contested legal issues by the pre-election hearing
- Limiting the scope of pre-election hearings, and restricting employers' ability to litigate voter eligibility issues at the hearings

The Board provides a [fact sheet](#) and a side-by-side [comparison](#) of current and new NLRB representation case procedures on its [website](#). The final rule implements changes that are substantially identical to those the Board proposed in 2011. (See our [August 24, 2011](#) *For Your Information*.) Those changes were later overturned by a federal court because the Board did not have the statutorily required quorum for rulemaking.



The Congressional Resolution

On March 4, the Senate approved [S.J.Res.8](#) — a resolution under the Congressional Review Act (CRA) to disapprove and nullify the NLRB’s so-called “ambush” or “quickie” election rules, slated to take effect on April 14. (See our [March 6, 2015](#) *Legislate*.) On March 19, the House of Representatives approved S.J. Res.8, and it was subsequently presented to the president. (See our [March 20, 2015](#) *Legislate*.)

The Veto

On March 31, President Barack Obama vetoed S.J. Res. 8. In explaining the veto, the president’s [memorandum of disapproval](#) states “S.J. Res. 8 would overturn the National Labor Relations Board’s recently issued ‘representation case procedures’ rule and block modest but overdue reforms to simplify and streamline private sector union elections.” The memorandum goes on to express support for the “vital role” of unions in the workplace.

An override of the president’s veto is possible, but unlikely. Given the House and Senate votes approving S.J. 8, supporters of the resolution would not be expected to have enough votes to override the veto. While federal lawsuits challenging the new NLRB election rule have been filed in Texas and the District of Columbia, neither court has stayed its implementation. Barring such action, the new rule will take effect on April 14.

In Closing

Congressional efforts to block implementation of the NLRB’s new union election rule met with a presidential veto. Barring an unlikely veto override or a court imposed delay, the final rule that will significantly alter how the NLRB administers representation elections will take effect on April 14. While continuing to monitor further developments, employers should prepare for these changes.

Congressional Review Act

The CRA allows Congress to pass a joint resolution to disapprove “major” rules issued by federal agencies before they take effect and stop them from being implemented. It also prevents the agencies from issuing a substantially similar regulation without congressional authorization.

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