

# PUBLICATION

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## NLRB's Quickie Election Rule Takes Effect

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In previous articles, we have explained how the National Labor Relations Board (NLRB) has taken the position that franchisors and franchisees are joint employers of the employees, setting the stage for large-scale union organization. Click [here](#) or [here](#) for examples. These cases involve labor organizing by the Service Employees International Union (SEIU) in franchised businesses like quick-service restaurants. The relatively small numbers of employees for each franchisee has prevented the organizing of these businesses. The SEIU wants the NLRB to introduce multi-employer collective bargaining across franchise systems and to promote the application of the financial resources of franchise systems to provide higher pay and benefits for these workers. Recent actions of restaurant workers demanding a higher minimal wage also are considered to be an indicator of union support and of the potential for union organizing in that industry. For example, the "Fight for \$15" strikes returned in cities across America on April 15, one day after the NLRB's new "quickie election" rules went into effect. Fight for \$15 is one of several groups across the country involved in efforts to force quick-serve restaurants to increase the wages they pay to \$15 per hour.

A recent NLRB rule referred to as "quickie election" increases the ability for unions to organize quickly and calls on employers in all industries, including hospitality, to be proactive and respond appropriately. The NLRB released its Final Rules on quickie elections in December, and they are now in effect. These rules come down heavily in favor of unions. This Final Rule from the NLRB makes it easier for unions to organize because of a much shorter timeframe between the union's filing a petition for an election and the time the company has to campaign. These changes mean that many elections can be held in as few as 13 days from the time the petition for an election is filed, as opposed to about 40 days under the old rules. Other significant changes include mandatory pre-election postings; the limiting of pre-election hearings; a mandate that employers provide employees' personal information, including cell phone numbers via an "Excelsior list;" and the expediting of post-election objections.

The rule also streamlines union elections in part by allowing certain documents to be filed electronically instead of by mail. In addition, it generally delays legal challenges from employers – such as whether certain workers are eligible to vote – until after workers have cast their ballots.

The underlying purpose of the Final Rule is to limit employers' ability to combat a union organizing effort after a petition for an election is filed with the NLRB. An employer will now have very limited time between the filing of the petition for election and the actual vote to educate its employees so that they can make an informed decision about representation. Consequently, the chances of an employer being vulnerable to organization efforts have significantly increased. In order to be able to effectively counter a union campaign, employers now have to be more proactive than ever and prepare for potential union efforts in advance of those efforts.

Some actions an employer can take to start preparing a labor relations education and response plan include:

- Do not wait until a union shows up before deciding to talk to employees about workplace matters, including a company's non-union preference and the reasons for that preference.
- Remind employees about the value of what the company already provides and share obstacles to providing additional benefits in the face of rising costs, such as for health care.

- Institute good human resources practices, build a strong culture and be prepared to respond immediately if problems occur.
- Provide union awareness training to managers and supervisors including how unions operate, signs of union organizing, the employer's position on unionization and what they can and cannot say in response to organizing or potential organizing.
- Consider a union vulnerability assessment to see what underlining issues might spark a union organizing attempt.