



ISSUE BRIEFING

SUBJECT:
'Back Door' Card Check

BACKGROUND: The Department of Labor (DOL) and the National Labor Relations Board (NLRB) have released proposed rules that are designed to work in concert to deny employees crucial information about union representation, limit free speech communication by employers, and create legal pitfalls for small business owners facing union organizing drives. At a time of 9.2 percent unemployment, these regulatory agencies will cause greater economic uncertainty and effectively deprive workers of the information they need to make an informed decision about union membership.

- NLRB's proposed Ambush Election rule shortens the time for union elections to as little as 10 days. The 60-day comment period closes August 22, 2011, and the rule will go into effect sometime thereafter.
- The shortened time frame will effectively deprive employees of the ability to hear from their employer before making a decision about union representation. Union organizers, however, meet with employees and campaign for months in advance before an election petition is filed. As a result, employees will only hear one side of the story — the union's — before having to cast their vote for or against representation.
- The proposal squeezes small business owners, who lack the resources and legal expertise to navigate and understand the union election process within such a short time frame.
- The proposal also imposes a new requirement where employers would have to turn over employee personal telephone numbers and email addresses to union organizers.
- There is no need to change the current election time frames as they are reasonable and permit employees time to make an informed decision, which would not be possible under the NLRB's new proposal. The NLRB's own statistics reveal that in 2010, the average election timeframe was 31 days, with more than 95 percent of elections occurring within 56 days.
- DOL proposed its "Gag Rule" in late June, with a comment period that also closes on August 22. Current law requires reporting for employers, consultants, and law firms, where the law firm or consultant directly "persuades" or interacts with employees. The law provides an exemption, however, when a law firm or consultant simply provides advice without directly interacting with employees.
- The proposed change virtually eliminates the "advice exemption," so that businesses would have to provide detailed and confidential information, including possibly proprietary information about business operations and details about contracts for services, including legal services. Labor relations activities that would trigger reporting requirement are expansive and include training for management and supervisors, employee handbooks and documents prepared by or edited by attorneys, and materials provided at conferences or by trade associations.
- Failure to file or filing false or incomplete reports subjects the employer, consultant or law firm, or trade association to civil and criminal penalties.

REQUESTED ACTION: Please encourage the DOL and the NLRB to abandon these proposed rules and to protect small business jobs.