



# Labor & Employment Issues Client Alert

Pitta LLP  
For Clients  
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**“We believe in the ideas of family, mutuality,  
the sharing of benefits and burdens  
for the good of all, feeling one another’s pain,  
sharing one another’s blessing  
recognizing that at the heart of the matter  
we are bound to each other.”**

**-Mario M. Cuomo-**

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## **FEDERAL COURT STRIKES DOWN MAJOR PARTS OF NLRB ELECTION RULES, A BIG WIN FOR LABOR**

On May 30, 2020 a federal judge in the United States District Court for the District of Columbia struck down major portions of a new set of regulations that modifies how union elections are conducted. In *AFL-CIO v. NLRB*, D.D.C., No.1:20-cv-00675, order 5/30/3030, the court ruled that the primary provisions of the new rules were substantive and not procedural and could not be issued without notice and comment.

The new rules were scheduled to go into effect on June 1, 2020. The proposed rules extended procedural deadlines and allowing more time between when a union files a petition to the agency to hold an election and the date when workers are able to vote to unionize. The proposed new rule would have provided more opportunities to challenge the process at different stages.

Traditionally, the time period between filing the petition and actual election is crucial by employers and unions because it often presents the peak of the union’s support among workers, and it is when employers are engaging in counter-union campaigns.

The AFL-CIO challenged the proposed rules arguing that parts of the rulemaking went further than merely changing the NLRB’s processes for carrying out union elections and had an effect on the substantive rights of parties involved in such proceedings.

Judge Kentanji Brown Jackson struck down major sections of the NLRB rules including changes that gave employers more leeway to challenge and litigate certain issues prior to the election; a required 20-business day waiting period between when agency officials approve an election and the date the election is to take place; and a rule that required officials impound and not ballots if a party’s challenge to the approval of an election remains pending after voting.

AFL-CIO General Counsel Craig Becker said that the decision “has now vindicated the important policy of allowing public input through notice and comment before an agency promulgated important rules like those governing representation elections.”

## NYS COVID-19 UPDATE

On May 30, 2020 Governor Andrew Cuomo signed Chapter 89 of the Laws of 2020 introduced by Senator Andrew Gounardes and the Assembly Rules Committee (at the request of Assemblyman Peter Abbate). The legislation provides accidental death benefits to the statutory beneficiaries of all public employees (state and local) who worked on or after March 1, 2020, contracted COVID-19, and died of COVID-19 on or before December 31, 2020.

The statutory beneficiaries will receive an accidental death benefit with the following limited proof: (1) The employee worked on or after March 1, 2020; (2) The employee worked in person, whether at the normal place of work or at another assigned place of work; (3) The employee contracted COVID-19; (4) The employee died on or before December 31, 2020; (5) COVID-19 caused or contributed to the member's death.

The employee's statutory beneficiary does not need to prove that the employee contracted COVID-19 at the workplace. The required proof is a physician, nurse practitioner, or physician's assistant diagnosis of COVID-19 or a diagnostic test confirming COVID-19; and either the death certificate stating that COVID-19 caused or contributed to death or a physician, nurse practitioner, or physician's assistant's certification that COVID-19 caused or contributed to the death. Once the statutory beneficiary demonstrates the proof above, the accidental death benefit is mandatory.

In other COVID-19 related news, Governor Cuomo announced that today New York dentists can reopen statewide. The dentists will be subject to state guidance on best practices for safety and social distancing. The guidance is available [here](#).

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