



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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“Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered.

And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.”

-George Orwell, 1984-

NLRB ISSUES GUIDANCE FOR IN-PERSON ELECTIONS, HOWEVER MAIL-IN UNION VOTING TO CONTINUE AS COVID-19 SURGES

Last week, the National Labor Relations Board (“NLRB”) issued a [General Counsel’s memo](#) setting forth guidelines for safely holding union elections during the COVID-19 pandemic. The memorandum describes safety measures to be taken to protect people from COVID-19 for in-person voting, however, the memorandum does not end mail-ballot elections.

During the pandemic, mail balloting has become the norm for NLRB for workers to determine whether or not to unionize. At the onset of the COVID-19 pandemic, the NLRB paused union elections entirely before resuming elections in early April, and permitting NLRB regional offices to decide on a case-by-case basis how best to proceed. Regional directors opted to hold almost all votes by mail, usually at the urging of the petitioning union and over the objections of employers.

Among the COVID-19 safety procedures listed in the NLRB’s memorandum are:

- Polling-times procedures for releasing voters must be sufficient to accommodate social distancing/cleaning requirements, without endangering participants by unnecessarily elongating exposure among Board Agents and observers.
- The number of observers per party during the election should be limited to one each where feasible.
- Only one voter will approach the observers’ table(s) and election booth(s) at a time to ensure social distancing.
- After clearance by the observers, the Board Agent will place an individual ballot on table for the voter and then step back to maintain social distance.
- No earlier than 48 hours before the election but no later than 24 hours before the election, the employer must:
 - Certify in writing that the polling area is consistently cleaned in conformity with established CDC hygienic and safety standards;
 - Certify in writing how many individuals have been present in the facility within the preceding 14 days, who:
 - have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;

- are awaiting results of a COVID-19 test;
- are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath; or
- have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

The memorandum affirms that “the decisions on election procedures and the safety of all participating in an election remain in the sound discretion of the Regional Director.” Given the surges in COVID-19 throughout the country, the fact that many employers are not yet fully open, and that employers may not be able to comply with the memorandum’s protocols, Regional Directors will likely continue to direct main ballots to protect the health of the Board agents and the election participants.

NY BOARD OF LAW EXAMINERS CANCEL BAR EXAM

On July 16, 2020 the New York Board of Law Examiners canceled the last remaining bar examination that was scheduled for 2020 because of the COVID-19 pandemic.

New York State Chief Judge Janet DiFiore said "Unfortunately, the global pandemic presents a persisting threat in a growing number of states and therefore, at this juncture, an in-person exam is not yet a safe or practical option in New York."

Chief Judge DiFiore said that the New York courts have approved a “temporary authorization program” that will let first time test takers perform “many of the functions of admitted attorneys” while they wait to formally sit for the examination. This is a link that provides guidance on the temporary authorization program: <https://www.nycourts.gov/ctapps/news/nottobar/07012020Order.pdf?source=email>.

GOVERNOR ORDERS THE DEPARTMENT OF FINANCIAL SERVICES TO CONDUCT A FULL INVESTIGATION OF TWITTER CYBER ATTACK

On July 16, 2020 Governor Andrew Cuomo ordered the New York Department of Financial Services to conduct a full investigation on Twitter attacks to determine if New York is vulnerable to cyber-attacks ahead of the 2020 general election. On July 15, several verified Twitter accounts of prominent Americans were hacked in a coordinated cyber-attack. These included the verified accounts of former President Barack Obama, Democratic Presidential nominee Joe Biden, Microsoft Founder Bill Gates, and celebrity Kanye West.

Governor Cuomo said "the Twitter hack and widespread takeover of verified Twitter accounts is deeply troubling and raises concerns about the cybersecurity of our communications systems, which are critical as we approach the upcoming presidential election. With more than 300 million users, Twitter is a primary source of news for many, making it a target for bad actors. This type of hack by con artists for financial gain can also be a tool of foreign actors and others to spread disinformation and - as we've witnessed - disrupt our elections."

The Governor also said "I am directing a full investigation into this massive hack through the New York Department of Financial Services and any other relevant state agency to bring the facts to light. Foreign interference remains a grave threat to our democracy and New York will continue to lead the fight to protect our democracy and the integrity of our elections in any way we can."

**“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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