



# Labor & Employment Issues Client Alert

Pitta LLP  
For Clients  
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## **UNDER PRESSURE, NATIONAL LABOR RELATIONS BOARD LIFTS SUSPENSION OF ELECTIONS**

On April 1, 2020, the National Labor Relations Board (“Board”) announced that it would not extend its suspension of representation elections past April 3, 2020 and will instead resume conducting elections beginning Monday, April 6, 2020. On March 19, 2020, the NLRB had ordered the temporary suspension of all Board-conducted elections through April 3, 2020.

While the March 19<sup>th</sup> announcement by the Board was assertedly based on the closure of several regional offices and limited staffing in some offices, the suspension of elections had been decried by the AFL-CIO as an unwarranted infringement on workers’ rights. It resulted in the cancellation of many elections, including some scheduled for mail ballots, which could have proceeded without impinging on the safety of Board employees. Further, mail ballots are authorized when necessary under the Board’s long-standing policies.

While the Board did not explain how it plans to conduct elections in the short-term, and further details and guidance is certainly forthcoming, it appears that the Board is more likely to allow mail-ballot elections during this emergency period. At least one Region has indicated it could conduct the ballot tallies via video applications. Pre-election hearings will be handled by conference call. Objections to votes will be addressed by video conference or phone.

Although elections technically will begin to be scheduled starting on April 6, 2020, many hearings related to previously filed petitions were indefinitely delayed last week. Given the rescheduling of those hearings, combined with the backlog of petitions and the varying circumstances in each Region, it is difficult to predict when the first elections will be scheduled.

The Board concluded that going forward, elections will resume in a “safe and effective manner, which will be determined by the Regional Directors.” The Board offered no information as to when it would resume handling unfair labor charges which were also put on hold.

## **U.S. DEPARTMENT OF LABOR ISSUES TEMPORARY RULES IMPLEMENTING THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

On April 1, 2020, the United States Department of Labor (“DOL”) issued temporary regulations on the Families First Coronavirus Response Act (“FFCRA”). The 124-page document largely follows the previously published FAQs by the DOL, but it does set forth some additional clarifications on the requirements imposed on employees asking for leave and the documentation that employers need to maintain under the FFCRA.

- In order to apply for Paid Sick Leave under the Emergency Paid Sick Leave Act (EPSLA) or Emergency Family and Medical Leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA), employees must provide:

1. Employee's name;
2. Date(s) for which leave is requested;
3. Qualifying reason for the leave; and
4. Oral or written statement that the employee is unable to work because of the qualified reason for leave.

- In order to take Paid Sick Leave due to a Federal, State or Local quarantine or isolation order, an employee must additionally provide the employer with the name of the government entity that issued the quarantine or isolation order related to COVID-19. Where an employee is seeking the leave due to a health care provider's advice to self-quarantine, an employee must provide the employer with the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.

- To take Paid Sick Leave in connection with Emergency Family and Medical Leave, an employee must additionally provide:

1. the name of the son or daughter being cared for;
2. the name of the school, place of care, or child care provider that has closed or become unavailable; and
3. a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes Paid Sick Leave or Expanded Family and Medical Leave.

- Record Keeping - The DOL also explained that an employer is required to retain all documentation provided for four years, regardless whether leave was granted or denied. In addition, if an employee provides oral statements to support their time off under the EPSLA and EFMLEA, the employer is required to document and maintain this information its records for four years.

The regulation is available at: <https://www.dol.gov/newsroom/releases/whd/whd20200401>

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