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NLRB Greenlights Union Elections During Global Pandemic, Allows Furloughed Workers to Vote by Mail

On Tuesday, Jill H. Coffman, director of the National Labor Relations Board's Region 20 office in San Francisco, issued an [order](#) allowing furloughed hotel workers to hold union elections by mail in the midst of the COVID-19 pandemic.

UNITE HERE Local 5 filed a petition with the Board to represent a bargaining unit of approximately 350 employees of the Prince Waikiki, a luxury hotel in Honolulu, Hawaii. Like many employers across the country, the Hotel temporarily suspended its operations due to government regulations implemented in response to COVID-19. As a result, all but 50 of its employees in the petitioned-for-unit were temporarily furloughed in late-March with no lapse in benefits. The employees were added back to the payroll in late-April. By mid-June the Hotel began paying employees for time actually worked and conducted ZOOM meetings with staff in preparation for hotel stays beginning on **August 1, 2020**.

At the Board hearing on June 15, 2020, the Hotel unsuccessfully argued, among other things, that the election should be postponed until after a substantial complement of employees returned to work. Ultimately, the decision made in favor of the Union turned on whether the furloughed employees had a "reasonable expectation of reemployment" in the near future. Coffman concluded that because the Hotel had since placed the furloughed employees back on the payroll, conducted regular meetings in preparation for its reopening, and continued to provide benefits, the employees had a reasonable expectation of reemployment in the near future and are therefore eligible to vote in the election.

Moreover, despite the NLRB's longstanding policy that elections be conducted manually, Coffman directed a mail-ballot election in light of the "extraordinary circumstances" created by the COVID-19 pandemic. Employees in the unit who were employed as of June 15, 2020, including those who did not work due to illness, vacation, or temporary layoffs, are eligible to vote. Election ballots will be mailed on **July 9, 2020**. All ballots will be commingled and counted on **August 14, 2020**.

Questions? Contact Stokes Wagner.

It is without question that the COVID-19 pandemic has burdened labor relations across the board. Indeed, the question of whether union elections should be postponed or held by mail during the ongoing pandemic has surfaced in numerous NLRB representation cases. Since the Board has left it up to the agency's regional directors to determine whether elections will be held in person or by mail, the regional directors have almost always opted for the latter option.

For now, employer challenges to union representation elections during the COVID-19 pandemic may be futile. Employers considering adjustments to existing labor relations strategies in light of decisions made favoring vote by mail elections should consult with Stokes Wagner to determine how to best navigate labor relations through the challenges presented by the COVID-19 pandemic.

We will continue to monitor these important issues and provide regular updates. [Click here for a PDF of this article.](#) For additional information contact Stokes Wagner.

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