

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142-AA16

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Final rule; delay of effective date.

SUMMARY: On April 1, 2020, the National Labor Relations Board (Board) published a final rule making three amendments to its rules and regulations governing the filing and processing of petitions for a Board-conducted representation election and proof of majority support in construction-industry collective-bargaining relationships. The purpose of this document is to postpone implementation of the rule during the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. The Board therefore delays the effective date from June 1, 2020 to July 31, 2020.

DATES: The effective date of the final rule published on April 1, 2020, at 85 FR 18366, is delayed from June 1, 2020 to July 31, 2020.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On April 1, 2020, the National Labor Relations Board published a final rule making three amendments to its rules and regulations governing the filing and processing of petitions for a Board-conducted representation election and proof of majority support in construction-industry collective-bargaining relationships. The Board made the rule effective on June 1, 2020.

The Board has determined that a delayed effective date is required to allow the Board's employees and stakeholders to focus on continuity of their operations during the national emergency concerning the Coronavirus pandemic during the next several months, rather than on implementing and understanding the Board's new rule. Therefore, the Board hereby delays the effective date of the rule to July 31, 2020.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5

U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

For the following reasons, the Board finds that notice and comment would be impracticable, unnecessary, and contrary to the public interest for this document delaying the effective date of its final rule. First, given the ongoing pandemic and national emergency, the Board believes that regulated entities should be focused on mitigating the pandemic's serious ramifications and on understanding their significant responsibilities and obligations under the pandemic relief laws enacted by Congress in the last month.¹ They should not be required to expend human capital resources reviewing the rule to ensure they understand the substantive changes, as the rule contemplates, or to adjust to the rule's new obligations. 85 FR at 18397. Given the immediate need to provide the Board's regulated entities with certainty regarding the delayed timing of their responsibilities and obligations under the new rule, submitting this short delay in the rule's effective date to notice and comment would be impractical and contrary to the public interest, per 5 U.S.C. 553(b)(3)(B).

Second, the Board concludes that proceeding directly to final rule is appropriate because notice and comment is unnecessary under the circumstances. The Board believes that this change is in the nature of a minor, technical correction. The Board issued its rule on April 1, 2020, only 5 days ago; therefore, the change in effective date is almost contemporaneous with the rule itself. It is therefore unlikely any parties will have relied on the rule to their detriment, and the minor amendment to the effective date of the rule merely extends the status quo for an additional 60 days. Moreover, the Board's initial choice of effective date, June 1, 2020, was discretionary; the Board did not propose an effective date in the NPRM, nor did it receive any comments suggesting one. Given this swift correction, the Board concludes that notice and comment is unnecessary to extend the effective date an additional 60 days, or to July 31, 2020.

¹ See Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 (Mar. 27, 2020); Families First Coronavirus Response Act, Public Law 116-127 (Mar. 18, 2020).

Dated: April 6, 2020.

Roxanne L. Rothschild,
Executive Secretary.

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 826

RIN 1235-AA35

Paid Leave Under the Families First Coronavirus Response Act; Correction

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Temporary rule; correction and correcting amendment.

SUMMARY: The Department of Labor published in the **Federal Register** on April 6, 2020, a temporary rule to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave to assist working families facing public health emergencies arising out of Coronavirus Disease 2019 (COVID-19) global pandemic. The leave is created by a time-limited statutory authority established under the Families First Coronavirus Response Act (FFCRA), and is set to expire on December 31, 2020. The FFCRA and the temporary rule do not affect the FMLA after December 31, 2020. Through publication of this document, the Department corrects certain preamble and regulatory text.

DATES: This rule is effective from April 10, 2020, through December 31, 2020. This rule became operational on April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor published a temporary rule in the **Federal Register** on April 6, 2020 titled, Paid Leave under the Families First Coronavirus Response Act. 85 FR 19326. The temporary rule contained an incorrect calculation of hours worked in a particular scenario (page 19329), a paragraph within the preamble describing regulatory text that was erroneously included (page 19338), along with incorrect cross references in