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CLIENT ALERT

New York Governor's Directive Requires Labor-Friendly Policies for Certain Publicly Funded Hotel and Convention Center Projects

On April 24, 2009, New York Governor Paterson issued a directive that gives unions a new bargaining tool when organizing workers at hotels or convention centers. The directive applies to hotel and convention center projects in which New York state, or an agency with at least one governor-appointed member, owns title to part of the facility or has entered into a 40-year or longer lease to occupy a portion of the new facility. It also covers construction projects that receive financial assistance in the form of grants, loans, tax credits or leases from state agencies or public authorities. Unlike other pro-union public work regulations that affect the actual *construction* of the project, this directive impacts *operators* of the hotel or convention center that will eventually occupy the site by requiring them to sign "Labor Peace Agreements" (LPAs) with unions seeking to organize their workers.

Though LPAs can take a variety of forms, common elements include:

- The employer agrees to not pressure or try to influence employees against the union.
- The employer agrees to provide the union with the names and addresses of its employees.
- The union and employer agree to a non-confrontational process for employees to indicate their desire to join or not join a union, free from any coercion or intimidation on the part of either the employer or the union.
- The union and employer meet to agree on the appropriate bargaining unit.

Governor Paterson's directive also mandates that an LPA should have a term of at least five years and should include a provision in which the union agrees to refrain from taking any economic action against an employer who signs the agreement.

While the LPA directive does not expressly require “card check” rights – which would allow a union to be recognized as soon as a majority of workers sign authorization cards – it does give unions significant leverage to demand right-to-organize provisions.

If the hotel or convention center operator is not known at the time state aid is granted, the developer of the site is obligated to ensure that the operator agrees to these terms. However, the directive includes two limited exceptions. First, a state agency may choose to exempt a project from the LPA requirement if the agency determines that the requirement will not further the state’s proprietary interest prior to the issuance of the initial request for proposal, or that it will substantially increase the cost to the state or prevent the project from moving forward. Second, the LPA will not be required if the financial assistance at issue is provided pursuant to a specific statute or regulation which prevents the conditioning of such assistance on an LPA.

We anticipate that independent employers or industry associations may challenge the LPA directive.

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Of course, if you should have any questions regarding this directive, please contact us.

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