

To: AFT Affiliate Leaders and Counsel

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Subject: Guidance and FAQs for Conducting Internal Affiliate Elections During the COVID-19 Crisis

AFT has received a number of inquiries from our affiliates seeking guidance concerning how to conduct internal union and AFT delegate elections in light of the social distancing, closures and other public health limitations issued by the Center for Disease Control (CDC), various state and local authorities and employers to limit the spread of the Coronavirus. This essentially means that much of the country may not meet in person, and therefore any unions that in the past have done elections or other business through in-person meetings have to think about other alternatives. This Guidance, in the form of Frequently Asked Questions (FAQs), provides information as to possible options under these unprecedented circumstances to conduct local elections and AFT delegate elections during this crisis.

This is general guidance. And guidance provided knowing the Trump Administration's Labor Dept. has demonstrated a consistent anti-union animus, so it is important to consult with your legal advisors, and/or your state affiliate before making changes to your standard election timing and procedure. Our AFT legal department is available to you as well. Feel free to email any specific questions to AFTlegal@aft.org or call the department line at 202-393-7472.

Q1: Can our union make changes to our election process as a result of the crisis?

Yes. Given the public health emergency that we face, a local executive board may exercise its authority to interpret the local's constitution and bylaws to modify, on a limited emergency basis, their election timing and procedures. It must be clear what you are doing and why you are doing it. The election changes must still meet legal requirements.

Q2: What are the legal requirements we must follow to change our election process and/or timing?

Your local's elections are guided by multiple legal sources. First is Title IV of the Labor Management Reporting and Disclosure Act (LMRDA):

- Some locals are required to follow federal labor law. Specifically, private sector locals and public sector locals with even one private sector member (namely AFT locals that file LM reports with the Department of Labor) must adhere to Title IV of the LMRDA. Also, elections for delegates to the AFT Convention must adhere to the LMRDA.

- Public sector only locals should follow Title IV of the LMRDA because it is incorporated into the AFT Constitution.
- Of course, the constitution and bylaws of your local, the state affiliate and AFT must be followed, recognizing that appropriate modifications may be necessary in light of the current healthcare crisis.

Q3: When should the membership be informed of any election changes?

Officers of a local in coordination with their Executive Board and Elections Committee, should discuss and decide on how to announce the plan to change an upcoming election. Any postponements or procedural modifications to an election should be promptly communicated to the membership in advance of the election date. That announcement could also address how the local plans to conduct its affairs and communicate to the membership about important developments during the healthcare crisis.

Q4: Should we postpone an election if in-person meetings or procedures are required that conflict with CDC, state, local or other public health guidelines?

Each local must make that decision. Local leaders, in coordination with their executive boards and election committees, may decide to postpone their elections until the public health restrictions are lifted. Assuming that the local decides to postpone its election because the constitution/bylaws requirements or other legal requirements conflict with the restrictions, we recommend you consider the following steps:

- Officers and the local executive board (and local election committee, if possible) should consider taking a vote, exercising their constitutional interpretative authority, to postpone the election in light of the current public health emergency;
- The results of that decision to postpone the election should be promptly communicated to the members; and
- The executive board decision regarding the election postponement should be only for the time necessary to plan for and conduct a modified election or until such time as an election can be safely conducted under the existing union procedures.

Q5: If we postpone our election, can incumbent union officers continue to serve past their term?

Yes. If the local has made good faith efforts to reschedule its election when the public health emergency has concluded and when group meetings and preparations are allowed, we believe that local officers and executive board members may continue to serve past the end of their term. This is a very unusual situation and must be evaluated carefully with attention to only extending the terms for the period necessary until it is safe to conduct the election.

Q6: If we postpone, and our local is subject to the federal LMRDA requirements (we file annual LM reports), what has the federal government said about that action?

The Department of Labor's Office of Labor Management Standards (OLMS), which enforces the LMRDA, has issued guidance saying it expects union to make a "good faith effort" to hold elections in areas affected by the Coronavirus. While a failure to hold a required election is an ongoing violation of the LMRDA, OLMS has said it will not file an enforcement action if the failure is attributable to the Coronavirus. Instead, if OLMS receives a complaint that a union has not timely held an election, OLMS will seek a voluntary compliance agreement with a union to hold an election "when practicable" at a date certain. Alternatively, if OLMS receives a complaint from a union member, but the election has been completed prior to OLMS receipt of the complaint, then OLMS will take no enforcement action.

Q7: Can we also allow our AFT Convention delegates from the last Convention (2018) to hold over and serve again for 2020 if we postpone the delegate election?

Yes. This is not the preferred course, however, as described in Questions 5 and 6 above, hold over delegates may be allowed.

Q8: Should we announce the rescheduled date of the election at the same time we postpone?

This is preferable. Again, we do not know when the crisis will end, so a new date would of necessity be tentative, subject to safe conditions existing on the new date.

Q9: Our local is not going to postpone our election. But our Constitution and/or Bylaws require in-person meetings or election procedures which are in conflict with public health protocols issued by government and/or healthcare officials. What alternative election procedures should we consider?

Officers and the executive board, working with the election committee, should consider alternative election procedures. There are some key areas to plan for:

- Nominations
- Eligibility Determinations
- Campaigning
- Notices
- Balloting
- Challenges

You might need to design procedures in each area that meet your legal requirements and are at the same time in keeping with the public health protocols. One option would be to consider using on line or virtual communications for each of the above steps in conducting the election *except balloting* (see FAQ 11 on electronic voting).

Q10: How would candidate campaigning occur since work sites are closed and/or we are practicing social distancing?

Candidates should comply with CDC and public health guidelines and recommendations. Opportunities to campaign could be provided by way of, for example,

allowing every properly nominated candidate with the opportunity to include in the ballot mail package a candidate statement, biography, or other campaign materials of specified reasonable length. Additionally, as is always the case, unions are required to honor reasonable requests by a candidate to distribute campaign literature at the candidate's expense.

Q11: Our Constitution and Bylaws require a secret ballot vote at a membership meeting or polling place. May I conduct my election electronically?

This is a very complicated question because the current regulations in federal law make such balloting extremely challenging. Your local is subject to that federal law if: 1) the local also is electing delegates to the AFT Convention; or 2) If at least one of the top officers in the local by right of office is an automatic delegate to the AFT Convention; and/or 3) The local represents private sector employees. If the answer to any of these (3) questions is "yes", then the balloting must comply with the provisions of the Labor Management Reporting and Disclosure Act. The DOL, which interprets and enforces the LMRDA, applies very strict scrutiny to electronic voting. This decision should only be made in consultation with your legal advisors, AFT and, state affiliate.

Q12: How will the rights of observers to the election be respected while also practicing recommended social distancing and public health recommendations?

While locals may provide observers with this opportunity in person while complying with public health recommendations, locals may consider livestreaming the ballot mailing and count on the internet.

Q13: Do we need to hold a vote for uncontested offices?

No, the same rules for uncontested offices in this situation apply as in regular elections; there is no requirement for a formal vote. The election committee can certify the only person running for the office as the winner.

Q14: What is the AFT going to do about its 2020 Convention and elections?

Our Convention is scheduled for July 27-30, 2020. We, like everyone else, are discussing all options. Right now we are in the apex of the pandemic so we will not make any decisions until May. If we can hold a convention in person, that is our preference, but if we cannot, we are considering several options including splitting the Convention, a part 1 held virtually in July, and then a part 2 later in 2020.