

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 20-01

October 21, 2019

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Peter B. Robb, General Counsel

SUBJECT: Electronic Filing of Documents

On February 24, 2017, the National Labor Relations Board made certain procedural amendments to Part 102 of its Rules and Regulations. These changes became effective March 6, 2017. Among the changes was the inclusion of a provision governing electronic filing of documents before the Board. Specifically, Section 102.5(c) provides:

(c) E-Filing with the Agency. Unless otherwise permitted under this section, all documents filed in cases before the Agency must be filed electronically (“E-Filed”) on the Agency’s website (www.nlr.gov) by following the instructions on the website. The Agency’s website also contains certain forms that parties or other persons may use to prepare their documents for E-Filing. If the document being E-Filed is required to be served on another party to a proceeding, the other party must be served by email, if possible, or in accordance with paragraph (g) of this section. Unfair labor practice charges, petitions in representation proceedings, and showings of interest may be filed in paper format or E-Filed. A party who files other documents in paper format must accompany the filing with a statement explaining why the party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. Notwithstanding any other provision in these Rules, if a document is filed electronically the filer need not also file a hard copy of the document, and only one copy of a document filed in hard copy should be filed. Documents may not be filed with the Agency via email without the prior approval of the receiving office.

The Office of the General Counsel has determined that Section 102.5(c) mandates the use of the E-filing system for the submission of affidavits, correspondence, position statements, documentary or other evidence in connection with unfair labor practice or representation cases processed in Regional offices. Accordingly, I am directing Regional offices to accept these documents only if they are e-filed, consistent with the foregoing instructions:

Reasons for the Move to E-Filing

The exclusive use of an electronic system for receipt of these documents is consistent with the filing requirements of most federal courts. Electronic filing provides a streamlined procedure by which documents received by the Agency will be placed and stored in the appropriate files automatically. Use of this uniform electronic filing system will ensure both the integrity and accuracy of Regional office case files. Moreover, this system will reduce the time and effort expended by Regional office employees in scanning or otherwise ensuring that documents were properly placed in the appropriate case file. The automated filing process allows Agency employees to devote more time to substantive case-handling matters, in furtherance of the General Counsel’s initiative to reduce case processing time. See GC 19-02.

Exceptions to the E-Filing Requirement

Section 102.5(c) does not apply to the filing of unfair labor practice charges or petitions in representation proceedings. Parties are encouraged to use the Agency's E-Filing system to file charges and petitions, but may continue to use regular mail, personal delivery, and/or facsimile to file and serve the documents in accordance with Sections 102.11 and 102.12.

Section 102.5(c) applies to parties with cases before the Agency, as well as to their attorney and non-attorney representatives. Individuals who are not parties to a case, including statutory employees within the meaning of Section 2(3) of the Act and non-employee witnesses, while not subject to the requirement, are strongly encouraged to file case documents using the Agency's E-Filing system. A statutory employee who files a charge or a representation petition will be treated as a party.

Parties who do not have necessary access to the Agency's E-filing system may provide a statement explaining the circumstances, or why requiring them to e-file would impose an undue burden. Where the documents are not filed using the E-filing system, Regional offices are hereby directed to reject them absent the written explanation referred to above. Regional Directors have discretion to accept or reject the explanation provided.

Use of E-Mail

The General Counsel is also mindful that many institutional parties, attorneys and non-attorney representatives typically use email to submit affidavits, correspondence, position statements, documentary and other evidence directly to the Board agent handling the particular case. Receiving documents in this fashion, however, does not offer the same efficiencies or consistency that doing so through the Agency's E-filing system will ensure. ***Regions are instructed not to accept documents emailed directly to Regional personnel absent extraordinary circumstances.***

Timing of Requirement

While the E-filing requirement described above is effective immediately, in order to accommodate any internal or external concerns associated with this transition, there will be a 90-day grace period during which these documents will continue to be accepted when filed through means other than the E-filing system, including e-mail, fax or hand delivery. Although it is my hope that filers will be able to make a smooth and prompt transition to use of the E-filing system, the 90-day period is put in place to give everyone the time to take any necessary measures to enable them to comply. On Tuesday, January 21, 2020, all documents filed with Regional offices in unfair labor practice and representation cases must be submitted electronically through the Agency's website (www.nlr.gov). From today until January 21, 2020, parties submitting these documents by paper, facsimile, or email will be reminded of the electronic filing requirement.

[Written instructions](#) for using the Agency's E-Filing System and the Agency's [Electronic Filing Terms and Conditions](#) policy are attached for reference and have been posted on the Agency's website. In addition, the Agency's website contains a [video demonstration](#) that provides step-by-step instructions and answers to [Frequently Asked Questions](#). In order to assist with the e-filing initiative, Regions are encouraged to provide training for members of the public on request. Any questions regarding the implementation of this memorandum should be directed to your AGC/DAGC in Operations.

/s/
P.B.R.

Attachments

ATTACHMENT #1

E-File Terms and Conditions

The National Labor Relations Board requires that all documents in unfair labor practice and representation cases be E-Filed with the Board's Office of Executive Secretary or the Division of Judges. Parties or other persons are strongly encouraged to E-File documents in unfair labor practice and representation cases with the General Counsel's offices (Office of Appeals or the Regional Offices).

E-FILINGS SHOULD NOT CONTAIN "SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION" (SPII) THAT IS NOT ESSENTIAL TO THE MATTER AT ISSUE

Please redact or remove any non-essential sensitive personally identifiable information before uploading an E- Filing. Examples of documents that may contain SPII include payroll records, medical records, bank statements, tax records, etc. If you believe you must file documents with the Agency that contain unredacted sensitive personally identifiable information, you must indicate during the E-filing process that the document contains SPII and check the box next to the type of SPII it contains. Where evidence submitted electronically is not in native format due to redactions of SPII, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

SPII is an individual's name **in combination with** one or more of the following:

- Date of birth
- Social Security number
- Driver's license number
- Financial account number
- Credit or debit card number

E-FILINGS CONTAINING INFORMATION COVERED BY A PROTECTIVE ORDER OR "UNDER SEAL" MUST BE DESIGNATED

If you are uploading an E-Filing that contains information (such as documents, testimony or other information) that may not be released to the public because the information is covered by a protective order, or has been placed "under seal," you **must** check the box labeled "Information Covered by a Protective Order or Placed Under Seal" during the E-Filing process.

E-FILINGS MUST BE TIMELY

The Agency will accept electronic filings **up to 11:59 pm in the local [time zone](#) of the receiving office** on the due date. Filings accomplished by any other means must comply with the requirements of [Section 102.2](#) of the Board's Rules and Regulations.

- A document will be considered timely filed if the E-Filing receipt reflects that the entire document was received by the Agency's E-Filing system before midnight local time on the due date. (Midnight is considered the beginning of the next day.)
- Parties are reminded that filings accomplished by any other means, e.g. mail, personal delivery or facsimile (if allowed), must be received by the [close of business in the receiving office on the due date](#)
- Although the Agency's E-Filing system is designed to receive filings 24 hours per day, parties are strongly encouraged to file documents in advance of the filing deadline and during normal business hours of the receiving office in the event problems are encountered.
- The receiving office's staff will respond to non-technical questions regarding the E-Filing system during normal business hours. For technical problems, please refer to the [E-Filing](#)

[FAQ](#) or send an email to e-filing@nlrb.gov If you wait until after the close of business to attempt to E-File and encounter problems, no one will be available to assist you.

- Technical Failure. If the Agency's E-Filing system is unable to receive documents for a continuous period of more than 2 hours after 12 noon (Eastern Time), the Agency will declare the site to be in technical failure. The Agency will post notice of the technical failure determination on the website as soon as possible. The Agency will also post notice regarding scheduled service, system maintenance or upgrades, or other events that will make the system unavailable to receive filings. If a party is prevented from E-Filing a document on its due date because of an Agency-determined technical failure, the document must be filed by 5:00 p.m. (Eastern Time) on the next business day.
- User Problems. Problems with a user's telephone lines, internet service provider, hardware, or software; user problems in understanding or following the E-Filing instructions; or rejection of a document because it contains a virus do not constitute a technical failure and will not excuse an untimely filing. A filer who cannot E-File a document because of any of these user problems must use alternate means to file timely. The Agency's offices have no lobby facilities for filing after the close of business. Thus, a user who waits until after close of business on the due date to attempt to E-File does so at his/her own peril. If you are unsure whether the problem is a technical failure or a user problem, assume it is a user problem.

ELECTRONIC FILING IS A MULTI-STEP PROCESS

You have completed the E-Filing process when you have (1) entered your data and uploaded your document(s); and (2) reviewed and confirmed your submission. Please take note of the confirmation number displayed at the end of the E-Filing process. You also will receive a confirmation email from GovDelivery. Please check your Spam folder and designate GovDelivery.com and e-filing@nlrb.gov as approved senders. Agency documents sent to the email address provided by the filer, and that are subsequently rejected by the filer's spam filter will be regarded as having been delivered.

ACCEPTABLE DOCUMENT FORMATS

The preferred format for submitting briefs, pleadings, and non-evidentiary documents by E-Filing is Adobe's Portable Document Format (*.pdf). In order to make the Agency's E-Filing system more widely available to the public, however, persons who do not have the ability to submit documents in PDF format may submit briefs, pleadings, and non-evidentiary documents in Microsoft Word format (*.doc, *.docx).

All evidentiary documents submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). At present, the Agency's E-Filing System can only accept evidentiary documents in the following file formats:

- .txt
- .doc
- .docx
- .pdf
- .xls
- .xlsx
- .csv
- .wav

- .mp3
- .mp4

If you have questions about the submission of evidence (e.g., you are attempting to file a document in a file format that is not listed) or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. Additional, and acceptable, file formats will be routinely added. Please refer to this document for the most current and up to date list of acceptable file formats.

Regardless of the file format, all documents E-Filed with the Agency must be submitted in a “read-only” format.

MAXIMUM SIZE OF FILES FOR UPLOAD

E-Filed documents must be less than one hundred megabytes (100 MB).

FILING OF ANSWER TO A COMPLAINT OR COMPLIANCE SPECIFICATION

For any Answer to a Complaint or Compliance Specification, the document being filed electronically should be in a PDF format, as described above, that includes the signature of counsel or non-attorney representative for represented parties or the signature of the party if not represented. If the electronic version of an Answer to a Complaint or a Compliance Specification is not in a PDF format that includes the required signature, then the original answer containing the required signature must be submitted to the Regional Office by other means within three (3) business days after the date of electronic filing. Please note that answers to complaints and compliance specifications are filed only with the Regional Offices.

DOCUMENTS MUST BE VIRUS-FREE

You are responsible for taking all reasonable steps to prevent sending any material to the Agency that contains computer viruses. All submissions using this E-Filing Form will be scanned for viruses. Any submission that contains a virus will automatically be deleted by the Agency's computer system and thus will not be processed. Rejection of a filing because it contains a virus will not excuse a late filing.

FILING ADDITIONAL COPIES IS NOT REQUIRED

Please do not send hard copies of documents that you file electronically.

DOCUMENTS MUST BE COMPLETE

Any document submitted electronically to the Agency must be complete. Any attachments must be converted into electronic form and included as part of the document. Attachments should not be filed separately from the electronic document.

CERTAIN DOCUMENTS MUST INCLUDE STATEMENT OF SERVICE

The Agency does not serve E-Filed documents on the other parties in the case. All documents submitted to the Agency electronically, which under the Board's Rules and Regulations must be served on other parties to the case, must include a statement of service showing how that document was served on other parties in accordance with the service requirements of [Section 102.5\(f\)](#) of the Board's Rules and Regulations. This rule provides: “When a party does not have the ability to receive service by email or fax, or chooses not to accept service of a document longer than 25 pages by fax, the other party must be notified personally or by telephone of the substance of the filed document and a copy of the document must be served by personal service no later than the next day, by overnight delivery service, or by fax or email as appropriate. Unless otherwise specified

elsewhere in these Rules, service on all parties must be made in the same manner as that used in filing the document with the Board, or in a more expeditious manner.”

“E-SERVICE” OF AGENCY-ISSUED DOCUMENTS

Parties who voluntarily register for electronic service (“E-Service”) will be e-mailed a link to the electronically issued document(s) being served or delivered in their case. This will constitute formal service or delivery of the electronically issued document(s) – physical copies of the document(s) will not be delivered to parties who register for E-Service. Parties who register for E-Service agree that this service or delivery fulfills the Board’s obligations for service of documents under the National Labor Relations Act, 29 U.S.C. § 161(4). Documents that are not electronically issued by the Agency will continue to be served or delivered in hard copy via customary means. Parties who register for E-Service should designate GovDelivery.com and e-Service@nlrb.gov as approved senders in their spam filter configuration. Agency documents sent to the email address provided that are rejected by the recipient’s spam filter will be regarded as having been served or delivered.

OFFICIAL BUSINESS

Outside parties may send to the Agency only electronic communications dealing with official Agency business. Unauthorized attempts to use the NLRB’s E-Filing system are strictly prohibited and may be punishable under the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act. We take precautions to maintain the security, confidentiality, and integrity of the information we collect at this site. Such measures include access controls designed to limit access to the information to the extent necessary to accomplish our mission. We also employ various security technologies to protect the information stored on our systems.

ATTACHMENT #2

1. What is E-File?
 - a. "E-File" is the system for submitting documents electronically pertaining to a case or inquiry pending before the National Labor Relations Board (NLRB). The E-File system is a quick and easy way to file documents with the NLRB.
2. Do I need to file multiple copies of documents that I file electronically?
 - a. There is no need to file multiple copies of documents that you file electronically.
3. How do I access my previously E-Filed documents?
 - a. You may access previously E-Filed documents through the [My Account Portal \(MAP\)](#) for 90 days from date of E-Filing.
4. I am a returning E-File user. Do I need to fill in Contact Information each time?
 - a. No. Existing E-File users can "**Sign In**" to have access to previously entered Contact Information without having to reenter it.
5. Where can I read the E-Filing rules?
 - a. The [E-Filing terms are available here](#). The E-Filing terms are also displayed each time you access the E-Filing system.
6. What documents can I E-File?
 - a. Most documents can be filed with the NLRB using the E-Filing system, including Charges and Petitions. The full terms and rules are available ([click here](#)).
7. For consolidated cases, do I need to E-File my document separately under each case number?
 - a. No, the document should be E-Filed solely under the lead (i.e., lowest) case number.
8. Is technical assistance available after business hours?
 - a. Agency personnel are not available after the close of regular business hours to assist parties with E-Filing. If you have difficulty after hours, you may try using a different computer. Temporarily removing pop-up blockers and changing your spam filter to allow receipt of messages from nlr.gov may expedite receiving a notification that your E-Filing has been received. A technical failure by the Agency's E-Filing system may excuse a late filing, but end user problems will not. If end user problems cannot be corrected before the 11:59 p.m. E-Filing deadline, the subsequent late filing will not be excused. Examples of end user problems include trouble with the telephone lines, the user's internet service provider, hardware, software, users failing to understand or follow E-Filing instructions, or rejection of the transmission because the document contains a virus.
9. What is the deadline for E-Filing? Can I request an extension?
 - a. E-Filed documents must be filed using the Agency's website before midnight in the time zone of the receiving office. Requests for extension of time are made by completing an online form. You can request an extension of time through the NLRB's E-Filing System by clicking [here](#). Please note that successful submission of a request for an extension of time through the Agency's E-Filing system does not mean that your request has been granted. The office receiving the request will contact you directly to confirm whether the request has been granted or denied.

10. What if I have a question not on this list?

- a. You may send questions not addressed here to webteam@nlrb.gov.

11. What if I receive more than one Account Number?

- a. If you receive more than one Account Number, you should add those to your online My Account Portal profile as well. In your Profile, enter the additional account number in the "Add Accounts and Addresses" box and then select the Add button. The page will refresh with the additional account information.

12. What is E-Service? Use the answer to this question from the MAP FAQs

- a. "E-Service" is the electronic service of Board and ALJ decisions and orders on parties. Parties who register for E-Service will receive, immediately upon posting of the Board's daily E-Docket on its website, an e-mail constituting formal notice of the Board's or Judge's decision and an electronic link to the decision. E-Service notifications will be sent at the close of the business day from NLRB headquarters in Washington, D.C. (5:00 p.m. Eastern Time). Board and ALJ decisions will not be mailed to parties who sign up for E-Service.

When documents are electronically-filed in a case, the NLRB sends a courtesy e-mail notification to other parties in the case who have registered to receive electronic service of Board and ALJ Decisions. The e-mail provides a link to the documents as a courtesy notification only; **it does not constitute service of the document by the filing party pursuant to Board Rules & Regulations Sections 102.114(a) or 102.114(i)**. In addition, this e-mail indicates only that the document has been E-Filed with the Agency. It does not constitute a determination that the document has been accepted by the Agency as meeting the requirements for filing. In the event the document being E-Filed is required to be served on another party to a proceeding, the other party must be served by e-mail, if possible. If the other party does not have the ability to receive electronic service, that party must be notified by telephone of the substance of the transmitted document and a copy of the document must be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission. See Sec. 102.114(a) and (i) of the Board's Rules and Regulations.

If you have not registered for E-Service, and wish to do so, you should log into the NLRB My Account Portal and select the checkbox that says "I consent to accept formal service of documents electronically from the NLRB." See the FAQ "How do I sign in to the NLRB My Account Portal?" for information regarding logging into My Account.

13. What is login.gov?

- a. login.gov is a service that offers secure and private online access to government programs and websites. With a login.gov account, you can sign into multiple government websites, including the NLRB public website, with the same email address and password.

14. Why is NLRB using login.gov?

- a. login.gov uses two-factor authentication, and stronger passwords, that meet [National Institute of Standards of Technology](#) requirements for secure validation and verification. By using login.gov, you'll get an extra layer of security to help protect you're My Account profile against password compromises.

15. How do I sign in to the NLRB My Account Portal?

- a. To sign-in to the NLRB My Account Portal you must have a login.gov account. If you do not already have a login.gov account, you must create one. This is a one-time step. For help in creating a new login.gov account click [here](#) for more information.

After providing your login.gov credentials you will be asked to enter an Inquiry, Case or Account Number and the email address associated with the Inquiry, Case or Account. This information is available in the email notification you received after you submitted a charge/petition or at the time that you e-filed documents in support of your charge/petition.

You will need to use your login.gov email address, password and the one-time security code every time you want to sign into the My Account Portal.

16. [What if I already have a login.gov account?](#)

- a. If you already have a login.gov account, you do not need to create a second one. Use your existing login.gov email address and password, plus the one-time security code to sign into the NLRB My Account Portal.

17. [Can I share a login.gov account with another person?](#)

- a. No. Each person needs his/her own login.gov account. Each person must set up his/her own login.gov account, with their own email address (not an email that you share with someone else).

18. [Which email address should I use to create a login.gov account?](#)

- a. You can use any email address to create your login.gov account. However, we suggest you use the email address you plan to use when corresponding with the NLRB.