



APRIL 2012

Recent Court Developments Further Delay the NLRA Notice Posting Rule

Two recent court decisions have significantly impacted the National Labor Relations Act (NLRA) notice posting rule that was the subject of our [legal update the week of April 9, 2012](#).

The U.S. District Court for the District of South Carolina decided on April 13, 2012, that the National Labor Relations Board (NLRB) had no authority to issue the notice posting rule. The court in [Chamber of Commerce, et al. v. National Labor Relations Board, et al.](#), held that the NLRA language is silent on the issue of notice posting, and the NLRA does not require or even permit the NLRB to issue such a rule. The court also found that, unlike other federal employment laws, the legislative history of the NLRA does not support a finding that Congress intended to impose a notice posting requirement. While this court clearly marked a split within the federal circuits, this decision is not considered binding for employers doing business in New England.

More importantly, on April 17, 2012, in [National Association of Manufacturers, et al., v National Labor Relations Board, et al.](#), the D.C. Circuit Court of Appeals granted an emergency motion for injunction pending the appeal of a D.C. District Court decision previously upholding the notice, in part. (This decision was discussed in our [previous update](#).) The Court of Appeals considered the NLRB's previous action postponing the operation of the rule during the pendency of the earlier district court proceedings. The Court of Appeals also considered the NLRB's cross-appeal argument that contests the district court's invalidation of the primary enforcement mechanisms for violations of the posting requirement. The Court of Appeals held that "[t]he uncertainty about enforcement counsels further in favor of temporarily preserving the status quo while this court resolves all of the issues on the merits."

This D.C. Circuit Court of Appeals order issuing a temporary injunction prohibits enforcement of the NLRA rule on a nationwide basis, meaning employers are not required to post the notice by April 30, 2012. The NLRB has responded to the temporary injunction by directing all of its regional offices nationwide not to implement the rule pending resolution by the D.C. Circuit Court. A final ruling on the NLRA notice from the D.C. Circuit Court is expected to be issued in the fall of 2012.

While the courts and the NLRB have halted the notice posting requirement at least temporarily, employers should continue to keep abreast of the rapidly changing NLRA developments. Our experienced labor attorneys are available to assist with questions related to labor relations issues and preventive labor training strategies and counseling.

Please contact one of the following labor relations attorneys with any questions regarding these changes.

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