LEGAL UPDATES

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# NLRB Employee Notice Update

## Services

Labor & Employment

Traditional Labor Relations

### UPDATE - April 17, 2012

**Hurry Up And Wait (Again): NLRB Notice-Posting Requirement Enjoined**

The U.S. Court of Appeals on April 17, 2012, entered an order enjoining the National Labor Relations Board's (NLRB) rule requiring the posting of employee rights. The rule, which was scheduled to go into effect April 30, 2012, has been a hot-button issue both in and out of courtrooms. The District of Columbia Circuit entered the injunction based upon conflicting decisions at the district court level regarding the NLRB's authority to issue the rule. The NLRB has issued a statement indicating that its regional offices will not implement the rule until the issues before the court are resolved, mooting the prior April 30, 2012, date and leaving employers in limbo regarding when, or if, the rule will go into effect.

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### UPDATE - April 13, 2012

**Federal Judge Strikes Down NLRB's Right to Establish New Notice-Posting Rule**

On April 13, 2012, U.S. District Judge David C. Norton of the District of South Carolina ruled that the National Labor Relations Board (NLRB) exceeded its authority when it issued its rule mandating that employers post a notice about employees' right to unionize. The ruling, in response to cross-motions for summary judgment filed in November by the NLRB and the U.S. Chamber of Commerce, strikes another blow to the hotly debated notice-posting rule that was scheduled to go into effect April 30. The chamber argued that the NLRB exceeded its authority under the Administrative Procedure Act.

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In holding that the NLRB so exceeded its authority, the opinion stated that "[t]he notice-posting rule proactively dictates employer conduct prior to the filing of any petition or charge, and such a rule is inconsistent with the board's reactive role under the Act. … Congress did not impose a notice-posting requirement on employers in the Act or commit this area of regulation to the Board."

The NLRB is expected to appeal the ruling. In any event, it would appear the notice-posting deadline of April 30 is no longer applicable. The NLRB is expected to provide guidelines for employers in the near future over the posting requirement given these litigation results. As soon as guidelines are issued, we will forward them on for review.

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## UPDATE - March 7, 2012

### Federal Judge Upholds NLRB's Right to Establish New Notice-Posting Rule but Finds Unlawful Penalties for Failure to Post

U.S. District Judge Amy Berman Jackson of the District of Columbia on March 2, 2012, issued a *ruling* on the claims raised by the National Right to Work Defense Education Foundation and the National Association of Manufacturers, among other business associations, regarding the promulgation of the final rule titled "*Notification of Employee Rights Under the National Labor Relations Act*." The plaintiffs had alleged that the National Labor Relations Board (NLRB) exceeded its authority under the Administrative Procedure Act and that the rule violated employers' First Amendment rights. An earlier demand for a preliminary injunction regarding the effective date of the new rule was made moot by the NLRB's postponement of its implementation until April of this year.

In sum, the court ruled in favor of the NLRB's authority to promulgate the rule but agreed with the plaintiffs that the penalties provisions were unlawful. Appeals by both parties are likely. This in turn may result in the board continuing to extend the effective date of the rule until all appeals have been exhausted, which will likely take several months, perhaps beyond the elections in November.

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## UPDATE - January 5, 2012

Faced with legal challenges to its proposed final rule requiring private employers to post notices advising employees of their rights under the National Labor Relations Act, the National Labor Relations Board (NLRB) again postponed the effective date — this time until April 30, 2012. Originally, the final rule required posting by November 14, 2011; however, the NLRB initially delayed the posting requirement until January 31, 2012, and now has further postponed the deadline until April 30.

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An NLRB release stated the postponement was at the request of U.S. District Court for the District of Columbia in order to “facilitate the resolution of the legal challenges” filed with respect to the rule.

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Private Sector Employer Notice of Employee Rights under the National Labor Relations Act now available online from the NLRB.

As we reported in our recent Legal Alert, the NLRB issued its final rule requiring private employers to post notices to its employees advising them of their rights under the National Labor Relations Act. The final rule directed the specific language that must be posted where other workplace notices are posted, and on internet or intranet sites if employer personnel rules or policies are posted on those sites. The required workplace poster is now available for free download from the NLRB website, www.nlrb.gov/poster.

**What This Means to You**

There is currently litigation pending seeking to stop this rule from going into effect; however, unless the courts rule to the contrary, employers should have the required notice ready for posting in appropriate sites on November 14, 2011, when the final rule takes effect.

**Contact Info**

Should you have questions about these changes, please contact your Husch Blackwell attorney.

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