



KD ALERT: Confusion Reigns Over NLRB Posting Rule

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After numerous delays caused by lawsuits and other challenges, the National Labor Relations Board (“NLRB”) is formally implementing an Administrative Rule that requires most employers to post a notice explaining employees’ rights to organize and to engage in union activity. The deadline for the posting is April 30, 2012.

While the legality of the notice posting is still being challenged in the appellate courts, the NLRB is proceeding with the posting requirement. This is not particularly surprising inasmuch as the NLRB has historically maintained its own rules and regulations in the face of contrary appellate law. Here, the NLRB is relying on a recent opinion of the United States District Court for the District of Columbia upholding the NLRB’s authority to require the poster as part and parcel of its “rulemaking authority.” Notably, the same decision also strips the rule of its strict penalties and statute of limitations tolling provisions. Thus, in its current form, there are no monetary penalties directly associated with the failure to comply with the posting mandate.

An employer’s failure to post does not, by itself, constitute an unfair labor practice under the National Labor Relations Act (the “Act”). However, the failure to display the poster may be considered by the NLRB in determining whether an employer has engaged in other conduct which violates the Act.

For now, it seems the penalties for non-compliance have been significantly weakened. Yet, this battle is far from over given the NLRB’s ongoing attempts to strengthen unionization efforts through both regulatory overreach and its legal opinions. More importantly for employers choosing to remain nonunion, compliance with the NLRB posting requirement may well serve to cause employees to ask questions. Employers must be ready with the answers.

For more information on this development as well as other NLRB rules, contact Arthur Kaufman and Jeff Meyer at (516) 681-1100. Additional information regarding the posting requirement can be found at www.nlr.gov/poster.

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