

KD Alert: NLRB Posting Rule Blocked

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(April 17, 2012)

Today, the District of Columbia Circuit Court of Appeals issued an emergency injunction blocking the National Labor Relations Board ("NLRB") from enforcing its long anticipated poster requirement, which had been scheduled to take effect April 30, 2012. According to the three judge panel in *National Association of Manufacturers v. NLRB*, Case No. 12-CV-5068 (D.C. Cir. April 17, 2012), "The uncertainty about enforcement counsels further in favor of temporarily preserving the status quo" while the Court "resolves all of the issues on the merits." The posting deadline is delayed until the merits of the appeal are decided. Oral arguments on the issue are not anticipated to occur until September 2012, and no decision by the Court is expected before late Fall.

The NLRB rule, which would require most private sector employers to post a notice explaining workers' collective bargaining rights, has been the subject of recent district court decisions addressing the NLRB's attempts to broaden its "rule-making authority." According to the NLRB, the rule was instituted because "many employees protected by the National Labor Relations Act ("NLRA") are unaware of their rights under the statute and that the rule will increase knowledge of the NLRA among employees, in order to better enable the exercise of rights under the statute. A beneficial side effect may well be the promotion of statutory compliance by employers and unions."

The appellate court's injunction follows on the heels of last Friday's decision from the federal District Court for South Carolina striking down the NLRB's authority to even issue such a rule. The decision, *Chamber of Commerce v. NLRB*, Case No. 11-CV-2516 (D.S.C. Apr. 13, 2012), held that the NLRB lacked the authority to force employers to post a notice advising employees of their rights under the NLRA. This decision, cited by the D.C. Circuit Court of Appeals, squarely contradicted a prior district court decision (*Association of Manufacturers v. NLRB*, Case No. 11-CV-1629 (D.D.C. Mar. 2, 2012), holding the NLRB did in fact have the authority to require the poster.

In light of the current injunction, employers are not now required to post the notice. However, employers should stay tuned to future KD Alerts for the latest developments.

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.nlrb.gov/poster.

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