

NLRB Postpones Employer Posting Requirement at Judge's Request

Under pressure from a federal judge in Washington, DC, the National Labor Relations Board (the "Board") announced it is again postponing a notice-posting rule that would require businesses to apprise employees of their right to unionize. The effective date has been pushed back from January 31 to April 30, 2012.

Initially, the Board required employers to display the notice by November 14, 2011, but since the rule was announced in August 2011, it has come under intense fire from business groups.

The most recent request for delay came from U.S. District Judge Amy Berman Jackson during a hearing on pending motions for summary judgment in a consolidated lawsuit brought by the following business groups against the Board: National Association of Manufacturers, the Coalition for a Democratic Workplace ("CDW"), National Right to Work Legal Defense and Education Foundation, Inc. ("NRTW"), National Federation of Independent Business ("NFIB"), Southeast Sealing, Inc. and Racquetball Centers, Inc. The plaintiffs' motions, and the Board's cross-motion for summary judgment, were filed on October 26, 2011, after the lawsuits were consolidated on October 4, 2011.

In agreeing to the postponement, the Board acknowledged that the delay will "facilitate the resolution of the legal challenges that have been filed with respect to the rule."

Plaintiffs have alleged that the posting requirement oversteps the Board's statutory authority, ignores congressional intent and encroaches on employers' First Amendment rights.

The posting requirement is also being challenged in a separate motion brought by CDW, NRTW, NFIB, Southeast Sealing, Inc. and Racquetball Centers, Inc. on the ground that the Board no longer has authority to implement or enforce the rule because it no longer has a quorum. The plaintiffs in that motion argued that the Board lost its quorum with the recent expiration of Member Craig Becker's term, and the President's attempted "recess" appointments are invalid because the appointments did not actually occur during a Senate recess and, therefore, required the consent of the Senate.

If the notice-posting rule is upheld, most private sector employers, including non-unionized businesses, will be required to display the 11-by-17-inch posting advising employees of their rights under the National Labor Relations Act. See Moses & Singer LLP's prior alerts for additional information.

<http://www.mosessinger.com/articles/files/EmployeesRightToUnionize.pdf>

<http://www.mosessinger.com/articles/files/NLRBExtendsNLRADecline.pdf>

Employers are advised not to post prior to April 30 or until the matter is resolved by the courts. We will continue to keep you updated.

If you have questions regarding this Alert, please contact the author, **Kimberly Klein** at 212.554.7853/kklein@mosessinger.com.

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