NLRB’s Poster Postponed! The National Labor Relations Board Suspends Implementation of Its Notice-Posting Rule

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Employers concerned about having to post notices on April 30 informing employees of their rights to unionize and engage in other activities protected by the National Labor Relations Act can breathe a temporary sigh of relief. Following an injunction entered by a federal court of appeals, the National Labor Relations Board announced it would hold off requiring employers to post the controversial notice pending resolution of various court challenges that have been posed to the Board’s authority to require the posters.

The Board’s notice-posting rule requires virtually all private employers to conspicuously post an 11x17 notice advising employees of their rights to organize a union and engage in other protected activities and providing contact information for the Board, and to publish a link to the notice on an internal or external website if other personnel policies or workplace notices are posted there.

A federal district court in Washington, D.C. recently concluded the Board could lawfully require employers to post the notice. Last week, another district court, this time in South Carolina, came to the opposite conclusion, holding the Board did not have authority to require the notice posting. Yesterday, a court of appeals reviewing the Washington, D.C. district court decision entered an injunction preventing the Board from implementing the rule while the court considers the case. The appellate court found the uncertainty surrounding enforcement of the rule counseled in favor of temporarily preserving the status quo. The court directed that oral arguments would occur in September 2012, suggesting the temporary injunction will stay in place at least until sometime this fall.

Late yesterday, the Board, citing the need for uniform application of the notice-posting rule throughout the country, announced it would not be implementing the rule pending resolution of the court cases. This postponement follows a prior one (from January 31, 2012, to April 30, 2012) the Board issued while courts reviewed the rule.

Importantly for employers who are federal contractors or subcontractors, neither the appellate court’s injunction nor the Board’s voluntary postponement affects the requirement under Executive Order 13496 to post a very similar notice issued by the Department of Labor. Thus, federal contractor employers should not use the Board’s announcement as an invitation to remove the DOL-generated poster, which they should already be posting.

In sum, at least for now and until fall, employers are not required to post the Board’s employee rights notice. Federal contractor employers, however, should continue to post the similar notice required by the Department of Labor.

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