



LABOR AND EMPLOYMENT BRIEF

NEW NLRB POSTING REQUIREMENT BACK ON HOLD

On March 21, 2012, A. Edward Hardin, Jr. told our readers about the National Labor Relations Board’s continued efforts to implement its August 30, 2011 rule that would require most private sector employers to post an 11 x 17 inch notice that advises employees of their rights under the National Labor Relations Act. After a series of postponements, the new poster requirement was scheduled to finally take effect on April 30, 2012. But, in light of events within the last week, the NLRB’s poster requirement has once again been put on hiatus.

There is now disagreement among two federal district courts regarding whether the NLRB actually has the authority to require the employee rights poster. In March 2012, a D.C. District Court judge found that the NLRB had the authority to issue the rule. However, last week, a South Carolina District Court judge ruled the other way and concluded that the NLRB lacked authority to promulgate the rule. Because of the conflicting decisions at the district court level, the D.C. Circuit Court of Appeals temporarily enjoined the rule.

On April 17, 2012, the NLRB issued a statement in which its chairman, Mark Gaston Pearce, spoke about the NLRB’s position regarding the federal district court decisions and the status of the rule. The NLRB maintains its position that the poster requirement is well within the Board’s authority. In that vein, the NLRB intends to appeal the South Carolina decision. The NLRB also plans to appeal a portion of the D.C. District Court judge’s decision in which the judge questioned the rule’s enforcement mechanisms. However, for the time being, the NLRB said its regional offices will not implement the rule until the conflict over the Board’s authority has been resolved. We will keep you posted.



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