

INSIGHTS

Mandatory Posting Date for NLRB's Notice of Unionization Rights Remains in Effect

April 10, 2012

Federal Court Partially Upholds Notice Rule and April 30 Posting Deadline

On March 2, 2012, a D.C. federal court ruled that the National Labor Relations Board (NLRB) can require all employers subject to the NLRB's jurisdiction to post a notice of Employee Rights, including the right to unionize. Business groups that filed [*the challenge*](#), including the National Association of Manufacturers, the Coalition for a Democratic Workplace, the National Federation of Independent Business and the National Right to Work Legal Defense and Education Foundation, have appealed the ruling and requested an injunction pending appeal to stay implementation of the new rule. The district court denied the request but, to date, the D.C. Circuit Court of Appeals has not ruled on the injunction request.

[*As previously reported*](#), the original date for the required posting was November 14, 2011, which the NLRB delayed twice and is now set for April 30, 2012.

The district court cut back on the impact of the rule, finding that the NLRB exceeded its authority by including provisions that permitted the NLRB to deem an employer's failure to post the notice both an automatic unfair labor practice and a waiver of the statute of limitations for certain unfair labor practice charges, although the court recognized that the NLRB could find a failure to post an unfair labor practice in an individual case.

The challenging business groups have argued to the D.C. Circuit that the district court's decision leaves employers "no guidance at all" as to when a failure to post constitutes an unfair labor practice. The NLRB maintains that the district court was correct in upholding its authority to issue its rule, and it has reserved its option, "in due course," to challenge the court's restrictions on its enforcement provisions.

A separate challenge to the NLRB's rule by the U.S. and South Carolina Chambers of Commerce remains [*pending in the South Carolina federal district court*](#).

Absent a court order or another voluntary delay by the NLRB, all [*employers subject to the jurisdiction of the NLRB*](#), which includes most private sector employers, [*Executive Order 13496*](#).

Copies of the poster and specific information on the posting requirements, including the number, size, location(s), media and languages of the required notice, are available at [*http://www.nlr.gov/poster*](http://www.nlr.gov/poster).

As we previously reported, also set to go into effect on April 30, 2012, are the NLRB's revised election rules which change the time and procedures for employers to respond to union election petitions.

In a separate development, the NLRB has also recently announced that it will be providing additional information to nonunion employees about their rights on its [website](#).