

Employment Practice Update

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Federal Court Upholds Posting Requirement in NLRB Regulation

By Christopher B. Lunny and Angela D. Miles



In August 2011, the National Labor Relations Board (“NLRB” or “Board”) issued a Final Rule requiring employers to notify employees of their rights under the National Labor Relations Act (“NLRA”). As we described in a previous [Employment Practice Update](#), the new Rule requires almost all private-sector employers to display an 11-by-17 inch poster summarizing an employee’s rights under the NLRA. While employers have long been required to provide notice of other employment law rights, the Board has never previously required employers to notify employees of union rights under the NLRA. Since the Rule was published, business groups around the country have filed multiple lawsuits challenging the NLRB’s authority to enact the new Rule. In response to the legal challenges, the NLRB first postponed implementation of the Rule from its original effective date of November 14, 2011, until January 31, 2012, and then again to April 30, 2012.

In March, a federal judge in the District of Columbia weighed in on the Rule’s legality. In [National Association of Manufactures v. NLRB, et al.](#), several employers and trade associations asked the Court to decide whether the NLRB had the authority to require private-sector employers to display the posters and argued that the NLRB was not given authority to enact “general rules for the workplace.” Unfortunately for employers, the Court disagreed. The Court decided that the NLRB lawfully enacted the Rule requiring the poster display under its broad authority to carry out the goals of the NLRA.

The Court eliminated, however, the Board’s primary means of enforcing the new Rule. First, the Court found that failure to post the notice could not automatically constitute an unfair labor practice. Instead, the Board must make a specific finding based on the facts and circumstances of the individual case that failure to post the notice actually interfered with the employees’ exercise of their NLRA rights.

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The Court also rejected the NLRB’s authority to automatically toll the six-month statute of limitations in unfair labor practice actions against employers who have failed to post the notice. The opinion reasoned that Congress mandated a six-month statute of limitations for the filing of an unfair labor practice and the NLRB did not have the authority to substantially amend the NLRA’s statute of limitations through the Rule’s tolling provision.

Despite the invalidation of these enforcement provisions, the posting requirement remains intact, and the Court’s decision does not excuse employers from complying with the Rule. Accordingly, employers should ensure that they are in compliance with this new posting requirement no later than **April 30, 2012**. The NLRB’s website, found [here](#), offers copies of the required poster, as well as answers to frequently asked questions. Employers should also stay tuned for future developments regarding the Rule, as the Court’s decision has been appealed. If you have any questions regarding the Rule or this decision, please contact our office at (850) 425-6654.



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This article is meant to provide a brief overview and points of discussion regarding employment and labor law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.