

U.S. Court of Appeals Enjoins NLRB from Enforcing New Labor Law Rights Posting Rule

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Last month, in *National Association of Manufacturers v. National Labor Relations Board, et al.*, the United States District Court for the District of Columbia upheld the National Labor Relations Board's (NLRB) recently promulgated Rule requiring private employers to post a notice advising employees of their rights under the National Labor Relations Act (NLRA).

Despite objections by numerous organizations, the court held that the NLRA granted the Board broad rulemaking authority and that the implementation of the new Rule was within the scope of that authority. The Board argued, and the court agreed, that many employees are not aware of their NLRA rights and that requiring the posting of a notice of rights is a reasonable means of promoting greater knowledge.

On April 17, 2012, the United States Court of Appeals for the District of Columbia Circuit issued an injunction against implementation and enforcement of the Rule pending appeal of the District Court's decision. Although the District Court's decision would have required covered employers to post the notice by April 30, 2012, employers are not required to post the notice pending the outcome of the appeal.

In particular, the Rule requires employers subject to the NLRA to "post notices to employees, in conspicuous places, informing them of their NLRA rights, together with Board contact information and information concerning basic enforcement procedures." In addition, employers with a workforce of 20% or more who are not proficient in English are required to post translations of the notice, which can be obtained from the NLRB. Employers who regularly communicate with their employees about personnel rules and policies via the intranet or internet must also post the notice prominently on these websites.

Impact: Employers subject to the NLRA are not required **at this time** to post the notice pursuant to the Rule. Once the Court of Appeals holds oral argument (likely to be in September 2012) and rules on the appeal, employers may be required to post the notice if the Court of Appeals upholds the Rule.

The notice is an 11x17 inch poster and can either be downloaded and printed from the Board's website, Employee Rights Poster, or obtained in hard copy from one of the Board's offices.

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