

INSIGHTS

D.C. Circuit Court Blocks NLRB's Notice Posting Rule

April 17, 2012

Posting Requirement Delayed at least through September 2012

The United States Court of Appeals for the D.C. Circuit today granted an injunction blocking the National Labor Relations Board (NLRB) from implementing its new notice posting rule. The rule would have required [all employers subject to the NLRB's jurisdiction](#) to post a notice of Employee Rights, including the right to unionize, in the workplace by April 30, 2012.

As a result of the court's injunction, covered employers need not post the notice pending the resolution of the appeal, which will not be scheduled for oral argument until September 2012.

[As we reported](#) last month, the D.C. district court partially rejected [a challenge to the rule filed by business groups](#) finding that the NLRB has the statutory authority to require the posting of the notice but not to implement proposed penalties for failure to post. The district court denied a request for an injunction. The business groups immediately appealed.

In its decision granting the emergency injunction pending appeal, the D.C. Circuit noted that the NLRB had "postponed operation of the rule during the pendency of the district proceedings in order to give the district court an opportunity to consider the legal merits before the rule took effect. That postponement is in some tension with the [NLRB's] current argument that the rule should take effect during the pendency of this court's proceedings before the court has had an opportunity to similarly consider the legal merits." The court also noted that the Board's failure to decide whether it would appeal the district court's striking of the penalty provisions created "uncertainty about enforcement," which also weighed in favor of "temporarily preserving the status quo" during the appeal.

[As we reported yesterday](#), a South Carolina federal district court ruled on April 13, 2012 that the posting requirement exceeded the NLRB's authority and was unlawful.

The D. C. Circuit's action resolves any issues created by the differing federal court decisions and makes clear that employers need not post the notice unless and until the injunction is lifted following the conclusion of the appeal.