



Weston Hurd Client Advisory - March 2012

NLRB's Notice Posting Rule Postponed No Longer

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A federal judge in Washington, D.C. recently denied a request by the National Association of Manufacturers to further delay implementation of the NLRB "notice" rule. As we have explained in prior alerts, the rule requires most private sector employers (both union and nonunion) to post a notice that informs employees of their rights under the National Labor Relations Act, including their right to unionize. The National Association of Manufacturers and other trade groups had filed a lawsuit seeking to overturn the rule.

The good news is that Judge Jackson agreed with the plaintiff trade groups that the NLRB exceeded the scope of its authority in enacting two of the more onerous parts of the rule - specifically, the provision that would have made it an unfair labor practice for an employer to fail to post the notice and the provision that would have allowed the Board to toll the six month statute of limitations for any unfair labor practice charge against an employer until the employer posted the notice. Judge Jackson ruled that these provisions were invalid.

However, Judge Jackson upheld the proposed language of the notice and the requirement that all employers post it. Although the labor lawyers at Weston Hurd continue to believe that the NLRB does not have the authority to issue this rule, Judge Jackson's refusal to enjoin implementation of the posting rule means that all employers will be required effective April 30, 2012, to post the notice.

A copy of the notice can be downloaded from <https://www.nlr.gov/poster>. The actual notice must be at least 11" x 17" and in the type and style prepared by the NLRB. Like other employment notices, it must be posted in "conspicuous places" where it can be readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted. It is also important to note that if you, as an employer, customarily communicate with employees on an intranet or Internet site, the NLRB notice must also be displayed prominently on such sites in addition to the actual physical posting.

It will now be up to the Court of Appeals (and perhaps, ultimately, the Supreme Court) to determine whether the NLRB exceeded its authority in adopting the "notice" rule.

If you have any questions, comments or concerns about this Client Alert, please contact your Weston Hurd lawyer.

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