

APRIL 18, 2012

## Questions?

If you have any questions about this alert, please contact:



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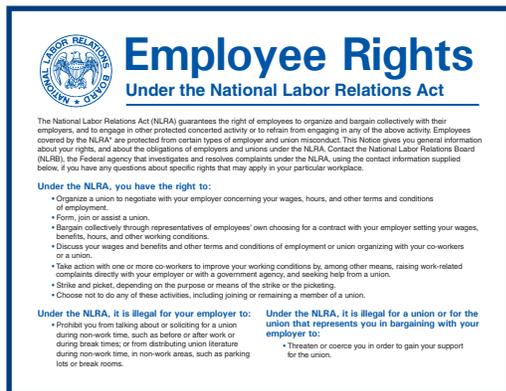
## NLRB Posting Requirement Set for April 30 Is Postponed Yet Again

The NLRB requirement that virtually all private sector employers post an 11 x 17 notice advising their employees of their rights under the National Labor Relations Act, originally proposed in December of 2010 and scheduled to go into effect in November of 2011, then postponed twice, most recently until April 30 of this year, is up in the air again.

In March, the federal District Court for the District of Columbia rejected an attempt by the National Association of Manufacturers and other groups to shoot down the requirement entirely, but ruled that two of its elements were beyond the authority of the NLRB. One was the statement that failure to post the notice would constitute an unfair labor practice, and the other was a provision tolling the statute of limitations on any violation of the Act by an employer that had not complied with the posting requirement.

Last week a federal District Court in South Carolina ruled that the Board's rulemaking exercise was beyond its authority. Without discrediting the NLRB's view that employees need additional information about their rights under the Act, the judge found that the Act does not provide the necessary support for the Board's decision to require a posting in almost every workplace. It seems virtually certain that the NLRB will appeal that ruling to a higher court.

Just yesterday, in response to an appeal by the Manufacturer's Association of the lower court ruling in March, the Court of Appeals for the District of Columbia issued an injunction blocking the NLRB's entire rule, not just the elements the lower court found objectionable, pending a full-fledged review with an expedited schedule that should result in a decision sometime this fall. While the NLRB could have taken the position that its rule is still valid everywhere but in



**Employee Rights**  
Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below. If you have any questions about specific rights that may apply in your particular workplace.

**Under the NLRA, you have the right to:**

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

**Under the NLRA, it is illegal for your employer to:**

- Prohibit you from talking about or assisting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

**Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:**

- Threaten or coerce you in order to gain your support for the union.



the District of Columbia and South Carolina, late yesterday it decided to postpone the effective date yet again pending a definitive judicial resolution.

The posting requirement has had a controversial history. It was first adopted when the NLRB was down to only three members instead of its statutory five-member complement. The one Republican appointee was vehemently opposed, and there were even rumors that he might resign in order to leave a two-member Board that would be legally powerless to act. Shortly after it was adopted, the rule was challenged by several groups, including the U.S. Chamber of Commerce, the plaintiff in the South Carolina case. Many see it as an attempt by the NLRB to bolster unionism in the private sector, which is down from a high of 35% of the workforce more than fifty years ago to less than 10% now. This view would be consistent with a recent trend toward pursuing charges against non-union employers whose workers have allegedly engaged in “concerted protected activity,” such as sharing work-related gripes with their co-workers on Facebook.

If the posting or some version of it is ultimately required, the NLRB has done its best to make compliance easy. The poster itself can be downloaded and printed in several languages at [www.nlr.gov/poster](http://www.nlr.gov/poster); there’s a Q&A list at [www.nlr.gov/faq/poster](http://www.nlr.gov/faq/poster); and questions can be addressed to [poster@nlrb.gov](mailto:poster@nlrb.gov). Any member of our firm’s Employer Defense and Labor Relations practice group can also help you, and can offer advice if you are considering posting a statement about your company’s position on unionism along with the NLRB document.

### ***Questions or Assistance?***

If you have questions regarding this alert, please contact Brian Clemow at (860) 251-5711 or [bclmow@goodwin.com](mailto:bclmow@goodwin.com), or Jarad Lucan at (860) 251-5785 or [jlucan@goodwin.com](mailto:jlucan@goodwin.com).

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