

NLRB Delays New Workplace Posting Requirements Until January 31, 2012

by Ellen Connelly Cohen and Julia E. Judish

The National Labor Relations Board's ("NLRB") new rule requiring private employers to post a notice informing employees of their rights under the National Labor Relations Act ("NLRA") has been the subject of several legal challenges. These lawsuits question the NLRB's authority to promulgate this rule, and include challenges brought by the National Association of Manufacturers, the National Federation of Independent Business, and the U.S. Chamber of Commerce, among others.

In August 2011, the NLRB announced a new rule requiring employers to post an 11-by-17-inch notice in all places where personnel notices are typically posted, including intranet and internet websites, informing employees of their rights under the NLRA. See [Pillsbury Client Alert, New Workplace Posting Requirements](#), dated August 30, 2011. The rule was scheduled to go into effect on November 14, 2011, but the NLRB has announced that it is postponing the implementation date until January 31, 2012.

Under the posting requirement, employers must notify employees that they have the right to discuss their wages, benefits and other terms of employment with co-workers and the right to take action with one or more co-workers to improve working conditions by, among other means, raising work-related complaints. Additionally, the posting must notify employees that it is unlawful for an employer to terminate, discipline or take other adverse action against employees who exercise these rights. The poster is available from any of the NLRB's regional offices as well as the NLRB's website: <https://www.nlr.gov/poster>.

In postponing the implementation date until January 31, 2012, the NLRB said that the delay is a response to questions from business and trade organizations regarding which businesses fall under the NLRB's jurisdiction. According to the NLRB, the two-and-a-half-month delay will "allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses."¹

¹ The NLRB's news release announcing the delay is posted at <https://www.nlr.gov/news-media/news-releases>.


The new posting requirement has been the subject of several legal challenges questioning the NLRB's authority to promulgate this rule, including lawsuits brought by the National Association of Manufacturers, the National Federation of Independent Business, and the U.S. Chamber of Commerce, among others.² Many commentators surmise that the NLRB's decision to delay implementation of the posting requirement was influenced by the pending litigation as well as political pressures.

Employers should be aware that the effective date may slip even further – or indeed, the entire rule may be voided – in response to legal and political challenges. For now, however, January 31, 2012 is the effective date, and the NLRB has stressed that no other changes in the form or content of the posting requirement have been made. Pillsbury will be monitoring the rule and will issue client alerts in response to continuing developments.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

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 ² See Nat'l Ass'n of Mfrs. et al. v. NLRB et al., 1:11-cv-01629 (ABJ), consolidated with Nat'l Right to Work Legal Defense and Educ. Found., Inc. et al. v. NLRB et al., 1:11-cv-01683 (ABJ), filed in the U.S. District Court for the District of Columbia; U.S. Chamber of Commerce et al. v. NLRB et al., 2:11-cv-02516, filed in the U.S. District Court for District of South Carolina.

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