

December 28, 2011

## *National Labor Relations Board Postpones – Again – The Effective Date For The Posting of Its Employee Rights Notice*

For the National Labor Relations Board, 2011 has been a year of controversial actions. Yet, on December 23rd, the NLRB announced that it was postponing – for the second time – the effective date of one of its most controversial actions in 2011: its new rule requiring all employers to post a “Notification Of Employee Rights Under The National Labor Relations Act.”

The NLRB initially announced, on August 30th, that the new posting requirement would be effective on November 14th, but on October 5th, it postponed that effective date to January 31, 2012. On December 19th, U.S. District Judge Amy Berman, who is hearing a lawsuit challenging the notice posting rule, asked the NLRB to consider postponing the January 31st effective date, so that she would have more time to consider the legal issues raised by the lawsuit.

In response to Judge Berman’s request, the NLRB announced on December 23rd that it was postponing the effective date for the notice posting from January 31, 2012 to April 30, 2012. The NLRB’s press release stated that “postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule.”

The postponement means that employers will not have to post the “Notification Of Employee Rights Under The National Labor Relations Act” on January 31st. Whether employers will have to post the notice on April 30th may depend on how Judge Berman rules, the status of the other two lawsuits challenging the notice posting rule, and the NLRB’s reaction to the judicial decisions and the potential filing of appeals from those decisions. In brief, it is not yet clear whether the April 30th effective date will remain in force or will be postponed again by the NLRB or enjoined by a court. The good news is that for now, employers will not have to post the “Notification Of Employee Rights Under The National Labor Relations Act” until April 30th and potentially may never have to post it.

The notice posting rule is controversial because it represents an attempt by the NLRB to increase unionization among private sector employees by educating them about their rights under the National Labor Relations Act. All private sector employers – union and non-union – subject to the NLRB’s broad jurisdiction would be required to post the 11” x 17” notice and also include it on the employer’s “internet or intranet site” if an employer “customarily” posts personnel rules and policies on that kind of site. The notice sets forth employees’ rights under the NLRA, lists employer “unfair labor practices,” and even outlines how an employee can file an “unfair labor practice” charge against an employer. Failure to post the notice will constitute an “unfair labor practice,” may “toll” or suspend the six-month statute of limitations for an employee’s filing of an unfair labor practice charge, and may even be used by the NLRB as proof of an employer’s illegal motive in an “unfair labor practice” case in which the employer’s motive is an issue.

We will provide updates about the notice posting rule, the legal challenges to it, and the action that employers may need to take for the purpose of complying with it.

If you have any questions about the notice posting rule or what it means to employers, please contact your Butzel Long attorney or the authors of this Client Alert.

**Gary W. Klotz**

313 225 7034

[klotz@butzel.com](mailto:klotz@butzel.com)

**Marc W. Oswald**

313 225 7096

[oswald@butzel.com](mailto:oswald@butzel.com)

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