Alert: To Post or Not to Post the NLRB Employee Rights Poster - That is the Question

April 19, 2012

By now most employers are aware of the National Labor Relations Board’s (NLRB) posting rule that requires most private and nonprofit employers to post a notice of employee rights by April 30, 2012. Three recent developments have changed what employers are required to do.

Last Friday, a Federal District Court in South Carolina ruled that the NLRB does not have the authority to implement the posting rule. This decision arguably covers only South Carolina employers.

Earlier this month, a Federal District Court in the District of Columbia ruled that the NLRB does have the authority to implement the posting rule. This decision is currently under appeal. Yesterday, the District of Columbia Circuit Court of Appeals temporarily enjoined implementation of the posting rule until the Court has fully considered the NLRB’s authority to implement the posting rule on appeal and issues a decision. A hearing on this appeal is expected to occur in September 2012.

In response to these developments, NLRB Chairman Mark Pearce issued a notice yesterday afternoon stating that the NLRB will delay implementation of the posting rule in light of the injunction and conflicting opinions among the district courts. Chairman Pearce also stated that the NLRB intends to appeal the South Carolina decision to the Fourth Circuit Court of Appeals. He believes the NLRB does have the authority to require employers to post the employee rights notice.

Takeaway for Employers
The D.C. Circuit Court of Appeals’ temporary injunction and the statement by NLRB Chairman Pearce make it clear that employers have no obligation to post the employee rights notice while these conflicting court rulings are on appeal. It seems probable that the earliest this issue will be decided is in the fall. However, it is possible that this issue will go to the U.S. Supreme Court, likely delaying a decision until at least 2013. Stay tuned, but don’t put up that poster just yet!

For more information, please contact a member of Briggs and Morgan’s Employment, Benefits and Labor group.

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