

NLRB Chairman Delays Implementation of Posting Rule

On April 17, the Chairman of the National Labor Relations Board (the “NLRB” or the “Board”) issued a notice stating that the Board’s new regulation requiring most private employers to post a workplace notice detailing employee rights under the National Labor Relations Act (the “Act”), would not be implemented in any region in the United States pending the resolution of challenges to the rule now before the courts. The Board’s announcement came in reaction to a decision of the US Court of Appeals for the District of Columbia Circuit (the “DC Circuit”) that temporarily enjoins the Board from enforcing its rule.

As we advised you in several earlier Client Alerts, the notice at issue, which the Board initially sought to implement on November 14, 2011, was designed to advise employees of their rights to form and join unions, to bargain over their wages, hours and other terms and conditions of employment, and to take collective action to improve their working conditions. The implementation of the posting requirement was initially delayed by the Board at the request of a federal court hearing a legal challenge to the rule, but was scheduled to take effect as of April 30. Now, it is uncertain when, if ever, the posting rule will take effect.

Federal courts have already issued inconsistent decisions on the Board’s authority to enforce the rule. In March, the US District Court for the District of Columbia held that the Board acted within its authority under the Act when it promulgated the posting requirement (while finding certain other elements of the rule to be invalid). Just last week, the US District Court for the District of South Carolina reached the opposite conclusion, striking down the rule in its entirety. The ruling which prompted the Board Chairman’s action was triggered by an emergency motion to enjoin enforcement of the rule pending appeal of the DC District Court’s decision. In granting the motion, the DC Circuit noted that “The uncertainty about enforcement [of the posting rule] counsels ... in favor of temporarily preserving the status quo while this court resolves all of the issues on the merits.”

The DC Circuit will hear arguments on the validity of the regulation in September. We will keep you apprised of developments regarding this matter. For more information on this notice requirement, or on employee rights and employer obligations under the National Labor Relations Act more generally, contact any attorney in Ropes & Gray’s [labor & employment](#) department.