

LABOR & EMPLOYMENT

NLRB DELAYS NEW RULE REQUIRING EMPLOYERS TO POST NOTICES OF EMPLOYEE RIGHTS

by James B. Perry
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In a surprising development, the National Labor Relations Board (NLRB) announced that it will voluntarily delay implementation of its new rule requiring private sector employers to post Notices of employee rights under the NLRA, until January 31, 2012. The Rule was originally scheduled to be effective November 14, 2011.

We published a Client Alert titled "NEW NLRB RULE REQUIRES PRIVATE SECTOR EMPLOYERS TO POST NOTICES" in September 2011, notifying employers of this latest attempt by the NLRB to enhance Union efforts to organize non-Union workers. The NLRB announced its voluntary delay in implementing this Rule, during a Status Conference on October 5, 2011 for a case brought against it by the National Association of Manufacturers (NAM) in the Federal District Court in Washington, D.C. This case, which has significant national implications, is an effort by the NAM to stop the NLRB from even promulgating such a Rule. The NAM's Complaint asserts that requiring all private sector employers to post Notices of employee rights to unionize and engage in concerted activities is not consistent with the intent of Congress when it passed the NLRA, and is thus beyond the NLRB's authority. The NAM lawsuit also claims that such a Rule violates the Administrative Procedures Act.

Both the NLRB and the NAM have filed Summary Judgment Motions. The Washington, D.C. District Court has scheduled a Hearing on the Summary Judgment Motions for December 19, 2011. The Court has promised to rule on the Motions before January 31, 2012. We will continue to monitor this case as it proceeds and to report any further developments.

This legal action by the NAM has served to slow down this pro-Union effort by the NLRB. However, we believe that the NLRB

and the Department of Labor will continue devising novel actions to help Unions organize non-Union employees. All of the attorneys in our Firm's labor and employment practice group are available to assist employers in appropriate and lawful responses to this and any future NLRB action.



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