

## LABOR & EMPLOYMENT

### NLRB NOTICE POSTING RULE UPHELD

The first decision in the lawsuit filed by the National Association of Manufacturers (NAM) and other employer associations contesting the new Rule promulgated by the National Labor Relations Board (NLRB) to require all private sector employers covered by the National Labor Relations Act (NLRA) to post Notices informing employees of their rights to unionize was issued earlier this month.

In a 46 page opinion, Washington, DC District Court Judge Amy Berman Jackson, an appointee of President Obama, decided that the NLRB had the authority to require employers to post Notices informing employees of their rights under the NLRA. However, Judge Jackson also ruled that the provision of the NLRB's Rule that made a failure to post the Notice a separate Unfair Labor Practice was invalid. Judge Jackson also struck down the provisions of the NLRB's Rule that tolled the NLRA's six month statute of limitations during the period the Notice was not posted at a worksite. Finally, Judge Jackson refused to rule that President Obama's recent recess appointments were invalid, in denying a separate motion by the NAM and the employer associations.

The elements of the NLRB's proposed Rule that tolled the statute of limitations for any period at a worksite that the Notice was not posted and to provide that a failure to post the Notice was a separate Unfair Labor Practice were the most significant and troublesome elements of the Rule. Even though the NAM and the other employer associations were successful in defeating these two elements of the Rule, they immediately filed an appeal of Judge Jackson's Decision with the Washington, DC Circuit Court. Plaintiffs NAM and the employer associations also asked Judge Jackson to enjoin the mandatory requirement of posting the Notice during the pendency of their appeal in the Court of Appeals. Judge Jackson refused to enjoin this requirement. This ruling means that all employers covered by the NLRA must post the Notice beginning April 30, 2012.

It appears that neither the employer associations nor the NLRB are prepared to back off from confrontation over the scope of the NLRB's authority to act administratively. Regardless of how the Court of Appeals rules, it is likely that this matter will end up in the U.S. Supreme Court. While the contest continues in the courts, employers will be required to post the Notices. Employers who wish to make their own statements about unions are not precluded in any way from doing so. Therefore, each employer should consider whether it desires to communicate concerning union to its employees, either before the Notice is posted, or simultaneously with the posting. We recommend that any employer wishing to communicate its position regarding unionization, contact a member of our Firm's Labor and Employment Group to make sure that any communications are lawful under the NLRA.

#### FOR MORE INFORMATION CONTACT:



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