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NLRB Announces Postponement Of Board Posting Rule After Appeals Court Injunction

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The saga of the National Labor Relations Board's Posting Rule continues. On Friday, April 13, Judge David C. Norton of the Federal District Court for the District of South Carolina, in a case brought by the South Carolina Chamber of Commerce and the U.S. Chamber of Commerce, ruled that the Board exceeded its regulatory authority in requiring a workplace posting of employees' union rights. The NLRB has announced it will appeal that decision.

In a previous alert (March 2012), we informed you that another Federal District Court in the District of Columbia had upheld the Rule's requirement of a posting, but ruled that other parts of the Rule exceeded the Board's regulatory authority. That case is on appeal. On Tuesday, April 17, partly in response to the South Carolina opinion, the D.C. Circuit Court granted the U.S. Chamber of Commerce's motion to enjoin the Board from implementing its posting rule pending its decision in that appeal.

In light of the D.C. Circuit Court's injunction and the interest in uniform implementation and administration of agency rules, the Board has announced that it will not be implementing the posting rule until the issues before the court are resolved. Accordingly, employers **DO NOT** have to put up the Board's posting on April 30. The D.C. District Court set an expedited briefing scheduled which sets September for a hearing. As a result, there likely will not be a decision until fall at the earliest. We will keep you apprised of any further developments.

This Alert was prepared by Geoffrey P. Wermuth, a partner in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Wermuth, the attorney assigned to your account, or your own labor counsel.

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