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LABOR & EMPLOYMENT LAW E-BRIEF

NLRB Postpones Notice Posting Deadline to April 30, 2012

The National Labor Relations Board (“NLRB”) has again postponed, until April 30, 2012, the new requirement that employers subject to the National Labor Relations Act (“NLRA”) post a notice informing employees of their rights under federal labor law.

The NLRB posting rule requires employers to post a notice (11” x 17”) of employee rights under the NLRA. The poster states that employees have the right to discuss their working conditions; to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; to strike and to choose not to do any of these activities. The poster also provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with complaints.

The posting requirement applies to all employers subject to the NLRA whether or not the employer is currently unionized. NLRA coverage is complicated but in general the NLRA covers retail businesses with annual gross revenue of \$500,000 or more. The NLRA covers nonretail businesses with annual direct or indirect inflows or outflows across state lines that equal or exceed \$50,000.

The legality of the posting rule is the subject of two pending lawsuits—one in Washington, D.C. and one in South Carolina. The lawsuits allege, among other things, that the NLRB exceeded its authority because the posting rule establishes a new unfair labor practice (failing to post the notice) which is not

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stated in the NLRA.

In postponing the deadline to April 30, 2012, the NLRB stated, “postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule.”

We will continue to keep you informed about the proposed posting rule and when, or if, it takes effect. If the rule survives the current challenges and becomes effective, the posting will likely result in more discussion among employees about pay, benefits and working conditions and in more union organizing efforts for which you will need to be prepared. This is especially so since the NLRB adopted another new rule shortening the time between the filing of an election petition and the holding of the election from an average of 42 days down to 10 days.

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