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Federal Appeals Court Invalidates NLRB Posting Rule

In a decision issued on May 7, 2013, the United States Court of Appeals for the District of Columbia invalidated a National Labor Relations Board rule that would have required all employers to post a notice informing employees of their rights under the National Labor Relations Act. This same Court issued a temporary injunction against the NLRB in April 2012, prohibiting the NLRB from enforcing the rule to give the Court an opportunity to fully examine the issue. This decision marks another setback in the NLRB's continuing effort to help unions organize employees.

The notice, which the National Labor Relations Board intended to require employers to post, would have stated that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to refrain from any of these activities. The notice would have also provided examples of unlawful employer conduct and instructions on how employees can contact the NLRB with questions or complaints. To draw employees' attention to the notice, the NLRB intended to mandate that the notice be in an oversized format.

This decision is the second recent setback in the Obama administration's effort to assist unions. This same Court recently ruled that President Obama's January 2012 recess appointments to the NLRB were invalid. Notwithstanding these judicial victories for employers, employers must effectively monitor employee relations and be vigilant because the NLRB has operational initiatives in place to aid in union organizing and to punish employers that commit what it deems to be unfair labor practices. Ongoing training is essential so that supervisors spot the warning signs of organizing activity and are equipped to respond. If you have any questions, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com)