

## Second Update: Do We Have to Add Another Poster to the Bulletin Board?

As previously discussed, the National Labor Relations Board (NLRB) has published a rule requiring all private employers, except for very small businesses, to post a new set of employee rights in the workplace. In October, the NLRB delayed the posting deadline to January 31, 2012. In December, the NLRB again pushed back the deadline, this time to **April 30, 2012**.

If the rule ever becomes effective, every employer would be required to put up a new 11" by 17" poster, which advises employees of their rights under the National Labor Relations Act. The poster is available (free) at [www.nlrb.gov/poster](http://www.nlrb.gov/poster). Under the rule, failure to post this notice could be found by the NLRB to constitute an "unfair labor practice" and subject the employer to penalties.

But it is not clear whether the poster rule is valid. It is under scrutiny in two different federal district courts. In South Carolina (2:11-cv-02516) the NLRB is defending a lawsuit filed by the U.S. Chamber of Commerce, while in the District of Columbia (1:11-cv-01629) the NLRB is battling a lawsuit filed by has the National Association of Manufacturers and National Federation of Independent Businesses. In each case the parties have filed cross-motions for summary judgment. We expect these courts to rule on the issue prior to the April 30, 2012 deadline.

Many employers are waiting to see what the courts decide, before putting up the poster. Some non-union employers are also preparing a second poster, to put up alongside the NLRB poster, to advise their employees of additional rights – such as the right to refuse to sign a union petition, without fear of retaliation. The NLRB has said that an employer may post a supplemental notice (in addition to the NLRB's Notice), so long as it does not contain any "threat of reprisal or force or promise of benefit."

Tuesley Hall Konopa LLP will keep a close eye on this litigation and will publish a follow up report when it is resolved. Meanwhile feel free to contact your THK attorney if you have any questions regarding updating or maintaining the best employment practices and policies.



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