



Inside The Beltway

Keeping You Informed

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Critical developments in labor and employment law

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Challenges to NLRB's final rule requiring private sector employers to post Notice of Employee Rights beginning November 14, 2011

Executive Branch/Administration

National Labor Relations Board—notice posting final rule under challenge

As previously reported in our August 25, 2011, [Inside The Beltway Alert](#), the National Labor Relations Board has ordered private sector employers to post a [Notice of Employee Rights](#) (to form, join or assist a union and bargain . . . or not) beginning November 14, 2011.

The National Labor Relations Board's notice posting rule is now under challenge. On September 8, 2011, the National Association of Manufacturers filed a lawsuit claiming that the Board is without statutory authority to require notice postings by employers not otherwise involved in an active representation case or unfair labor practice proceedings.

On September 16, 2011, the National Federation of Independent Business (NFIB), represented by Nixon Peabody LLP, and the National Right to Work Legal Defense and Education Foundation, Inc. (NRTW) jointly filed suit in the Federal District Court for the District of Columbia asking the court to declare the Board's rule unlawful and unenforceable and to issue a preliminary and permanent injunction ordering the Board to cease and desist from implementing and enforcing the notice posting rule.

NFIB and NRTW allege that the Board is without statutory authority to issue the notice posting rule. The lawsuit contends the National Labor Relations Act (Act) does not grant the Board authority to issue a rule requiring a notification of rights, to assert jurisdiction over any employer not otherwise party to a representation petition or unfair labor practice case, to create an unfair labor practice for failing to post such notice, or to effectively repeal the Act's statute of limitations as set forth in the rule.

The NFIB/NRTW complaint also claims that the Board's notice posting rule unlawfully compels employer speech to avoid prosecution for failing to post the notice in violation of an employer's

rights under the First Amendment of the U.S. Constitution and Section 8(c) of the Act to refrain from speaking absent a finding of a statutory unfair labor practice violation.

We will keep you informed of key developments as the case proceeds. Absent a preliminary injunction being issued by the court, private sector employers must plan on posting the Board's notice effective November 14, 2011, until such time as the matter is finally resolved by the court or a reviewing court on appeal.

For further information on the content of this *Alert*, please contact your Nixon Peabody attorney or:

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