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### NLRB Posting Requirement Upheld By Court

On March 2, 2012, a federal district court in Washington, D.C. upheld the authority of the National Labor Relations Board (“NLRB” or “Board”) to require most private sector employers to post a notice informing employees of their rights under the National Labor Relations Act (“NLRA”).

The court’s decision was predicated by challenges to the NLRB’s August 25, 2011 final regulation. While the court held that the NLRA’s broad rule-making authority allowed the Board to mandate the posting requirement, it also held that two other portions of the rule exceeded the Board’s authority. The court held that the Board exceeded its statutory authority with its enforcement provisions by: i) deeming any failure to post the required notice an unfair labor practice; and ii) tolling the NLRA’s statute of limitations for any case at a jobsite where an employer failed to post the required notice. The court found these provisions were inconsistent with the statutory language and, therefore, invalid.

Even though the court’s ruling has limited the Board’s enforcement powers, employers should be cautious about any decision to ignore the Board’s posting requirement. The Board can still, during their internal deliberations, hold the failure to post “against” the employer when considering a Section 8(a)(3) charge or whether to accept a limitations defense.

Employers should evaluate their work environment on a case-by-case basis to determine possible options such as: i) posting a “rebuttal” poster along with the required poster; ii) using the posting requirement to conduct union avoidance training; or iii) simply posting the notice in the “dead of night” and utilizing the multi-federal labor law poster to obscure that anything new has gone up (in other words, assume people do not read postings and do nothing to draw attention to the new posting).

The rule was originally set to become effective in November 2011. After the challenges to the rule, the Board postponed the effective date to January 31, 2012 and then extended it to April 30, 2012 to allow the district court time to review the legal issues. **The posting requirement currently goes into effect April 30, 2012.** Thompson Coburn will keep you informed of any revisions to the effective date or other changes.

Thompson Coburn attorneys, including Timothy J. Sarsfield, are available to consult with employers regarding the best course of action:

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