

Labor and Employment Law Update **Lawyers for Employers®**

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Employers Must Comply With NLRB Posting Rule by April 30

U.S. District Court Judge Amy Berman Jackson recently upheld the National Labor Relations Board (“NLRB”) employee rights notice-posting requirement. Accordingly, most private sector employers will be required to display this poster no later than April 30, 2012. The poster may be found at the NLRB website: <https://www.nlr.gov/poster>.

In her decision, the court ruled that the NLRB did not exceed its statutory authority under the National Labor Relations Act (“NLRA”) when it adopted the notice-posting rule. However, she determined that two provisions were invalid as a matter of law. First, the court found that the rule’s provision defining any failure to post as an unfair labor practice (“ULP”) violated the NLRA. While the NLRB may find, based on specific circumstances in any particular case, that an employer’s failure to comply with the posting requirement is a ULP, the court ruled that an employer’s failure to post was not a *per se* ULP. Second, the court invalidated the rule’s provision that tolled the statute of limitations in ULP actions involving job sites where the employer failed to post. According to the court’s decision, the NLRA does not “prohibit a mere failure to facilitate the exercise of those rights.”

The National Association of Manufacturers and others requested that the court delay the posting requirement while they appeal, but Judge Jackson declined to stay her decision. She reasoned that the NLRB’s rule simply notifies employees of rights that they are already guaranteed under the NLRA, and that increasing employee awareness cannot be deemed “irreparable harm” to employers. Judge Jackson further pointed out that her ruling struck down the more stringent enforcement provisions of the rule, lessening any potential threat to employers.

What does this mean for employers?

As Lane Powell’s Labor and Employment Practice Group reported in previous Legal Updates on [January 3, 2012](#), and [October 10, 2011](#), the NLRB had previously postponed its Employee Rights Posting Requirement while these legal challenges were being resolved by the district court. Now that the district court has issued its final ruling, most private sector employers, regardless of whether they are unionized or not, must comply with the posting requirement by April 30, 2012, unless the D.C. Circuit Court of Appeals grants a stay of Judge Jackson’s decision, or reverses the decision on appeal.

**For more information, please contact the Labor and Employment Practice Group at
Lane Powell: employlaw@lanepowell.com**

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