

## Employers Need to Know Employment Law Alerts from Ober|Kaler's Employment Group



### NLRB Employer Posting Deadline Now Postponed Indefinitely

The April 30, 2012, deadline for all employers to post a notice advising employees of their rights under the National Labor Relations Act (NLRA) has been postponed due to an injunction granted this week.

As you know this required poster is available on the National Labor Relations Board's (NLRB) website at [www.nlrb.gov/poster](http://www.nlrb.gov/poster). It is an 11 x 17 inch poster is directed to employees and lists specific employee rights and prohibited employer actions under the NLRA.

As mentioned in our [January 2012 client alert](#), the initial posting deadline imposed by the National Labor Relations Board (NLRB) was extended from January 31, 2012 to April 30, 2012 due to an ongoing court case challenging the NLRB's authority under the NLRA to require posting of this notice.

That court case had important consequences last month. On March 2, 2012, in *Nat'l Ass'n of Manufacturers v. Nat'l Labor Relations Bd.*, No. 11-1629 (D. D.C. Mar. 2, 2012), the U.S. District Court for the District of Columbia issued a decision invalidating two of the three penalties imposed on employers for not posting the notice. Specifically, the NLRB cannot find that non-posting is an unfair labor practice. Further, the NLRB cannot toll the current six-month statute of limitations for filing an unfair labor practice if notice is not posted by an employer. The Court left open the possibility that some situations may warrant these penalties, but did not give more detail. Importantly, this decision affirmed that the NLRB can use non-posting as evidence of anti-union animus in an unfair labor practice proceeding.

Then on April 17, 2012, the Court granted an injunction preventing the NLRB from requiring employers to post the notice at all. Arguments on the injunction are scheduled for September 2012. Therefore, at least until then, the notice will not have to be posted.

Regardless of this postponement, all employers should spend time educating staff about unions and preparing a counter poster. Employers are permitted to counter the NLRB mandated notice with their own pro-employer poster, which informs employees of facts about unions not included on the NLRB poster. For example, that even if a union is voted in, the NLRA does not require that a union and the employer reach an agreement regarding wages.

For more information on how to prepare your workforce and drafting a counter-poster, please contact Ober|Kaler's [Employment Group](#).

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#### **About Ober|Kaler**

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