

Why Obama's Recess Appointments to NLRB May Still Be "Good" For Employers

By [Daniel Schwartz](#) on January 5th, 2012

The NLRB confirmation process is broken and has been for years.

When President Bush was in office, the Democrats effectively blocked the selections to the Board. As a result, President Bush had to use recess appointments to fill the vacancies. [Back in 2010](#), when faced with opposition from the Republicans, President Obama did the same thing.

In 2011, President Obama has continued to face opposition to his nominees. So yesterday, he made three new recess appointments to the NLRB. ([Labor Relations Counsel has full details](#) on the selections here and there are other posts with [background here.](#)) [This will bring the board to five members for the first time in years.](#)

Now once again, political pundits are up in arms about how this is an unprecedented power grab and on and on.

This hyperbole may (or may not) make for good political theater ([and perhaps some of it is true](#)), but for employers, it's just more background noise.

[Back in 2010](#), I argued that recess appointments could be "good" for business because they would bring some more certainty to the law. Yes, existing precedents would be overturned under a new NLRB — but that happens each and every political cycle. (A better solution would be a tribunal that didn't shift with each presidential campaign, but that's an issue for another day).

The best quote back then was [from John Phillips, who used to write a great blog](#). He said then, in words worth repeating now:

Everyone expected this administration to be pro-labor and to have a pro-labor NLRB. It seems to me, therefore, that all the hand-wringing over[the nominee] is a bit overdone. I represent employers. I believe employer-employee relations are handled better without a union. I also believe, however, that when an employer ends up with a union, it's deserved 99% of the time. An employer will have much more to do with whether a labor union gets its foot in the door by the way employees are treated than by anything [the nominee] does.

The same holds true now. What the recess appointments will ultimately bring for employers is a bit more certainty. It's difficult enough for HR representatives to keep up with the rules but not knowing what the rules are to begin with makes planning nearly impossible. That's not to say that employers will "like" every rule; I'm certain that they won't. But a government agency that is in limbo or without leadership, just creates more questions than answers for employers.

Connecticut EMPLOYMENT LAW BLOG

INSIGHT ON LABOR & EMPLOYMENT LAW FOR CONNECTICUT BUSINESSES

This blog/web site is made available by the host/publisher for educational purposes only as well as to give you general information and a general understanding of the law. It is not intended to provide specific legal advice to your individual circumstances or legal questions. You acknowledge that neither your reading of, nor posting on, this blog site establishes an attorney-client relationship between you and the blog/web site host or the law firm, or any of the attorneys with whom, the host is affiliated. This blog/web site should not be used as a substitute for seeking competent legal advice from a licensed professional attorney in your state. Readers of this information should not act upon any information contained on this website without seeking professional counsel. The transmission of confidential information via Internet email is highly discouraged. Per a June 11, 2007 opinion of Connecticut's Statewide Grievance Committee, legal blogs/websites, such as this one, may be deemed an "advertisement" under applicable rules and regulations of Connecticut, and/or the rules and regulations of other jurisdictions.