

D.C. Circuit Court also Rules on NLRB Posting Requirement

1 min read

Apr 17, 2012

Yesterday we reported to you that the South Carolina District Court struck down the NLRB's posting rule which would have been effective as of April 30, 2012. Just this morning, the Court of Appeals for the District of Columbia Circuit (where a similar NLRB-challenge was pending) issued an injunction enjoining the posting requirement pending the outcome of an appeal.

The Court, in recognizing the South Carolina decision, stated:

We note that the Board postponed operation of the rule during the pendency of the district court proceedings in order to give the district court an opportunity to consider the legal merits before the rule took effect. That postponement is in some tension with the Board's current argument that the rule should take effect during the pendency of this court's proceedings before this court has an opportunity to similarly consider the legal merits. We note also that the district court's severability analysis left the posting requirement in place but invalidated the primary enforcement mechanisms for violations of the requirement. The Board has indicated that it may cross-appeal that aspect of the district court's decision. The uncertainty about enforcement counsels further in favor of temporarily preserving the status quo while this court resolves all of the issues on the merits.

Briefing on this issue will take place throughout the summer, and oral arguments are expected in September of 2012. Until then, please consult with counsel as to what posting requirements pertain to your business.

Topics

National Labor Relations Board (NLRB), D.C. Circuit Court Of Appeals