

South Carolina Court Strikes down NLRB Posting Rule

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Up until December, 2010, the National Labor Relations Board (“NLRB”), unlike most federal labor agencies, did not require employers to post a general notice of employee rights in the workplace. That changed, however, upon issuance of a proposed rule wherein all employees subject to the National Labor Relations Act (“NLRA”) would be required to post notices which informed employees of their rights under the NLRA. The final rule was ultimately published in August, 2011, and the requirements were set to take effect on April 30, 2012. The Chamber of Commerce of the United States and the South Carolina Chamber of Commerce sought an injunction to prevent the implementation and enforcement of the rule. The U.S. District Court for the District of South Carolina agreed with the Chambers, finding that the Board, in promulgating the final rule, exceeded its authority in violation of the Administrative Procedure Act.

A similar case is presently pending before the U.S. Court of Appeals for the District of Columbia Circuit, only there, the Court refused to enjoin the enforcement of the rule. It is, therefore, anticipated that any further action in the South Carolina case may be stayed, pending the outcome in the District of Columbia case.

Notwithstanding, this ruling presently appears to only affect employers in South Carolina. Thus, until a federal court of appeals has rendered an opinion on the matter, employers are advised to continue to watch for updates and to confer with counsel about the April 30, 2012 posting requirement.

Topics

National Labor Relations Act (NLRA), National Labor Relations Board (NLRB)