

Compliance: Employers closely watching Supreme Court's ruling in Canning

1 min read

Mar 17, 2014

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It's easy to identify recess in an elementary school day: The bell rings, the kids tumble out of class, and the yard fills with playful shrieks and laughter.

Not so with Congress. The U.S. Senate's chambers may be dark, official business on hold, the senators all home on vacation, and yet the legislative body may still be in session.

The issue of defining "recess" for the Senate lies at the center of [NLRB v. Canning](#), a case currently before the U.S. Supreme Court. The outcome could have a significant impact on employers. At stake is the status of hundreds of National Labor Relations Board (NLRB) rulings on issues ranging from employee social media policies to the legally permissible scope of workplace rules relating to employer confidentiality, employee discipline and off-duty employee access to the workplace.

More broadly, the Court's ruling will likely define the scope of the president's recess appointments power for future administrations. Presidents must normally obtain Senate consent to fill federal agency board positions. The Constitution permits Presidents to unilaterally fill agency vacancies when the Senate is in recess, an anachronism to the days when Congress recessed for months at a time.

This article first appeared in InsideCounsel.

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National Labor Relations Board (NLRB), Supreme Court Of The United States, Opinion