

APRIL 16, 2012

NLRB EMPLOYEE RIGHTS NOTICE POSTING RULE STRUCK DOWN IN ITS ENTIRETY BY FEDERAL JUDGE

Friday the 13th was a bad news day for the NLRB but potentially a very good news day for private employers. A federal district court judge in South Carolina on Friday, April 13, 2012 held that the NLRB's rule obligating private employers to post a notice explaining employee rights under the NLRA was beyond the NLRB's authority. The court essentially said that the NLRB's rule was not "necessary" to carry out its role as a "reactive agency" charged with preventing unfair labor practices and conducting representation elections. Because there was no specific direction by Congress to create a notice of rights poster, as in other federal employment laws, the NLRB exceeded its authority in requiring private employers to post this notice. The NLRB's rule was to take effect on **April 30**. Now, the overall applicability of the notice posting rule is in serious question. As we reported in an earlier [alert](#) on March 2, 2012, another federal district court struck down only portions of the NLRB's rule dealing with penalties and statute of limitations but left standing the general posting requirement.

WHAT SHOULD EMPLOYERS DO NOW?

With two inconsistent court decisions, the question now becomes, "What should an employer do?" About the only thing that is clear at this time is that private employers in South Carolina need not post the NLRB poster. For other employers, the court's ruling will not have a direct bearing on your posting obligation - so long as a Federal Appeals Court has not ruled or issued an injunction preventing the NLRB from enforcing the rule. At this time, an appeal is, of course, likely, and there may still be some court action prior to the April 30 posting deadline. In the meantime, private employers should consider the risks in not posting the poster and continue to monitor legal developments as the **April 30** deadline approaches.

We will continue to monitor this development and will keep you informed.

Reference: Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. NLRB, (No. 2:11-co-02516-DCN, DC SC, April 13, 2012).

Click [here](#) for a copy of the court's decision.

Should you have questions or require further information, please contact Stephen W. Lyman at 317.977.1422 or slyman@hallrender.com or your regular Hall Render attorney.