

CLIENT ALERT: Court Approves Board's Authority to Require Employers to Post Notice of Employee Rights

On March 2, 2012, the United States District Court for the District of Columbia issued a decision upholding the National Labor Relations Board's authority to issue a rule requiring employers covered by the statute to post a notice of employee rights. However, the Court also ruled that the Board did not have the authority to promulgate a provision that would treat any failure to post as an unfair labor practice and as a toll of the six (6) month statute of limitations for filing charges.

The Court found that the Board provided a reasonable explanation for why its notice posting rule was necessary to carry out the policies of the statute, namely that employees must know their rights under the law in order for them to be able to fully exercise those rights. The Court agreed that requiring employers to post notices of employee rights is a reasonable means of raising employee awareness of their rights.

In finding that the Board exceeded its statutory authority by opining that every failure to post the notice was an unfair labor practice, the Court disagreed with the Board's interpretation of the term "interference" in the unfair labor practice portion of the statute. The Court concluded that interference required an act of obstruction and not a mere unwillingness to help. Nevertheless, the Court noted that nothing in its decision prevented the Board from finding that a failure to post constitutes an unfair labor practice in any individual case brought before it. The Board simply could not make a blanket advance determination that a failure to post always constitutes an unfair labor practice.

Similarly, the Court held that the Board exceeded its authority in enacting a rule tolling the statute of limitations in any future unfair labor practice action at a job site where the notice was not posted. The Court noted that Congress mandated a short time period for filing charges and that equitable tolling was a defense granted "only in extraordinary and carefully circumscribed instances." The Court noted the Board's unquestionable right

to apply equitable tolling in appropriate cases.

A number of the plaintiffs have already filed a Notice of Appeal of the District Court's ruling and have asked the Court to enjoin NLRB enforcement of the rule pending resolution of the appeal. Additionally, a separate case brought by the United States Chamber of Commerce remains pending in South Carolina, where a hearing was held on February 6, 2012, to consider cross motions for summary judgment.

Assuming no new developments, employers are still required to post the notice of employee rights by April 30, 2012. For more information on the posting requirements, please see MBJ's legal updates of [January 4, 2012](#) and [August 31, 2011](#). Any employer who fails to post the notice will assume the risk of being found by the Board to have committed an unfair labor practice.

Please contact your Morgan, Brown & Joy attorney with any questions you may have concerning an employer's obligation to post the notice of employee rights under the National Labor Relations Act.

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