



Court Invalidates Sections of NLRB's Recent Notice-Posting Rule

Insights

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Today, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia invalidated key provisions of the National Labor Relations Board's "Notification of Employee Rights" rule, under which all covered employers would have been required after April 30th of this year to post an 11" x 17" poster, or else to face possible legal consequences. While she left the actual posting requirement intact, she ruled that the proposed penalties attached to the Board's rule were unlawful under the National Labor Relations Act (NLRA).

Specifically, Judge Jackson held that:

the NLRA granted the Board broad rulemaking authority to implement the provisions of the Act, and that the Board did not exceed its statutory authority in promulgating Subpart A of the challenged rule – the notice posting provision. But [the Court] also holds that the provision of Subpart B that deems a failure to post to be an unfair labor practice, and the provision that tolls the statute of limitations in unfair labor practice actions against employers who have failed to post, do violate the NLRA and are invalid as a matter of law.

While the Court left open the possibility that "inaction" [failure to post] could possibly constitute interference under the Act in isolated contexts in specific cases, it ruled that "the Board cannot make a blanket advance determination that a failure to post will always constitute an unfair labor practice."

Employers have been struggling for weeks now with how best to respond to this posting requirement, and a variety of approaches may all be valid based on a particular company's workforce (both supervisory and rank and file), management style, and general approach to employee relations. We would be happy to discuss this in detail at any time.

Regardless of the ultimate outcome of the posting requirement (and this ruling is likely to be appealed) the activist nature of a newly left-leaning Board is going to have far-reaching impact on labor-management relations for many years to come.

If you have any questions about this ruling please contact your regular Fisher Phillips attorney or any attorney in the firm.

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