



One Minute Memo[®]

NLRB Delays Notice Posting Requirement

The National Labor Relations Board (“NLRB”), under significant political and legal pressures, announced on Wednesday that it is postponing the effective date of its controversial rule requiring all employers to post notices advising employees of their right to unionize or otherwise demonstrate against their employer. The effective date has been postponed from November 14, 2011 to January 31, 2012. Click [here](#) to view the NLRB’s press release.

The NLRB claimed that the reason for the postponement is “to allow for enhanced education and outreach.” There is little doubt, however, that its decision was heavily influenced by, if not the direct result of, a request that it do so by U.S. District Court Judge Amy Jackson, who is deciding whether the NLRB should be enjoined from implementing its new rule until legal challenges to the rule are resolved. Further, last week, the House Appropriations Committee proposed a rider to the NLRB’s 2012 budget which, if passed, would prohibit the NLRB from allocating any portion of its budget towards enforcing the rule.

Many of the NLRB’s and the Department of Labor’s (“DOL”) recent decisions and rulemaking initiatives are being challenged both legally and legislatively. For example, there is also a rider to the DOL’s 2012 budget which, if passed, would prohibit the DOL from changing the definition of what constitutes “persuader” activities in its attempt to limit employer access to legal counsel. Also, Congressman John Kline, Chairman of the Education and Workforce Committee, in response to the NLRB’s proposed rules providing for “quickie” union elections, introduced legislation which would mandate that no union election could be held fewer than 35 days from the filing of a petition and that employers would be guaranteed at least a two-week period to prepare for any hearings regarding the petition.

While the immediate result is that the notice-posting rule will be delayed by more than two months, the delay reflects a much broader range of concerns for the NLRB.

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