



Inside The Beltway

Keeping You Informed

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Critical developments in labor and employment law

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GREAT NEWS—NLRB's final rule requiring private sector employers to post Notice of Employee Rights **delayed** until January 31, 2012

Executive Branch/Administration

National Labor Relations Board—notice posting final rule under challenge

As previously reported in our [September 19, 2011](#), and [August 25, 2011](#), *Inside the Beltway Alerts*, the National Labor Relations Board ordered private sector employers to post a [Notice of Employee Rights](#) (to form, join or assist a union and bargain . . . or not) beginning November 14, 2011.

On September 16, 2011, Nixon Peabody LLP, on behalf of the National Federation of Independent Business (NFIB), and the National Right to Work Legal Defense and Education Foundation, Inc. (NRTW) filed [suit](#) in the Federal District Court for the District of Columbia asking the court to declare the Board's rule unlawful and unenforceable, and to issue a preliminary and permanent injunction ordering the Board to cease and desist from implementing and enforcing the notice-posting rule. On September 28, 2011, Nixon Peabody LLP and counsel for the NRTW filed a [motion for a preliminary injunction](#) and setting forth the legal arguments.

On Monday, October 3, 2011, in a hearing before Federal District Court Judge Amy Berman Jackson, the Board's attorneys were asked to consult with the Board to delay the effective date of the rule to allow time for all parties to argue and the Judge to consider the legal claims and supporting case law.

Today, in an all party conference with Judge Jackson, the government lawyers reported that the Board agreed to stay the effective date of the mandatory notice-posting until January 31, 2012. The parties will now proceed to file motions and cross-motions for summary judgment followed by replies and a hearing before Judge Jackson on December 19, 2011. A final ruling regarding the legality of the Board's notice-posting rule will issue prior to January 31, 2012.

The Board issued a [public notice](#) immediately upon the conclusion of today's judicial conference explaining that its decision to defer the effective date is due to the need for more time to educate and inform the public.

NFIB and NRTW allege that the Board is without statutory authority to issue the notice-posting rule. The lawsuit contends the National Labor Relations Act (Act) does not grant the Board authority to issue a rule requiring a notification of rights, to assert jurisdiction over any employer not otherwise party to a representation petition or unfair labor practice case, to create an unfair labor practice for failing to post such notice, or to effectively repeal the Act's statute of limitations as the proposed rule would do.

The NFIB/NRTW complaint also claims that the Board's notice-posting rule unlawfully compels employer speech to avoid prosecution for failing to post the notice in violation of an employer's rights under the First Amendment of the U.S. Constitution and Section 8(c) of the Act to refrain from speaking absent a finding of a statutory unfair labor practice violation.

We will keep you informed of key developments as the case proceeds. For further information on the content of this *Alert*, please contact your Nixon Peabody attorney or:

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