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Under Fire in Congress and the Courts, NLRB Postpones Workplace Posting Rule

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We informed you in a recent [alert](#) of a Final Rule issued by the National Labor Relations Board (NLRB) requiring all employers under the NLRB's jurisdiction to notify employees of their rights under the National Labor Relations Act with a workplace posting.

The workplace poster required by the Final Rule notifies employees they have the right to act together to improve wages and working conditions, organize and join a union, bargain collectively with their employer, strike and picket, and discuss wages, benefits and other terms and conditions of employment, as well as the right to refrain from any of these activities. The required poster also informs employees that their employer is prohibited from interfering with the exercise of these rights or discriminating against them because they engage in or refuse to engage in union activity.

Most private sector employers, regardless of whether their employees are unionized, will be required by the Final Rule to post the 11-by-17 inch notice where the employer posts other government notices, such as FLSA and Title VII notices, as well as "wherever notices to employees regarding personnel rules and policies are customarily posted and are readily seen by employees" (e.g., on a company's internet or intranet site). For more information on the content of the workplace poster required by the Final Rule, the poster is now available on the NLRB's website and you can see it [here](#).

This new workplace posting requirement was to be effective November 14, 2011, though we noted that proposed legislation had been introduced in Congress to rescind the Final Rule and lawsuits had been filed to block the Final

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In the U.S. House of Representatives, the proposed legislation includes the Employee Free Choice Act (H.R. 2854) and the Employee Workplace Freedom Act (H.R. 2833), both of which would result in an outright repeal of the Final Rule if passed into law. In the U.S. Senate, the Employer Free Speech Act has been introduced to prohibit the NLRB from implementing the Final Rule.

In the courts, groups representing employers have sued the NLRB in different federal courts to block the Final Rule, including separate lawsuits by the National Association of Manufacturers and the National Federation of Independent Businesses in the federal court in Washington, D.C. and another lawsuit by the U.S. Chamber of Commerce in a South Carolina federal court. The plaintiffs in these lawsuits claim the Final Rule exceeds the NLRB's rulemaking authority and are seeking injunctions to prevent the NLRB from implementing and enforcing it.

The lawsuits filed in the District of Columbia have been consolidated and a court hearing has been scheduled in these cases for December 19, 2011. After that court hearing was scheduled, the NLRB announced it is postponing the effective date of the new workplace posting requirement under the Final Rule to January 31, 2012.

In its [press release](#) announcing the postponement, the NLRB stated that it was delaying the poster requirement "in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses." While there is speculation that the postponement resulted from the proposed legislation and the legal challenges in federal court, the NLRB stated in its announcement that "[n]o other changes in the rule, or in the form or content of the notice, will be made."

Employers subject to the Final Rule should stay tuned for further updates on its status.

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