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Labor and Employment – NLRB’s Employee Rights Poster Rule Is Invalidated By Court: What Does It Mean To Employers?

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In this issue:

NLRB’s Employee Rights Poster Rule Is Invalidated By Court: What Does It Mean To Employers?

The federal appeals court for the District of Columbia Circuit, on May 7, 2013, invalidated the National Labor Relations Board’s controversial rule to require private sector employers subject to the NLRB’s jurisdiction – virtually all private sector employers, both unionized and non-unionized – to post a notice about “Employee Rights Under the National Labor Relations Act.” The rule violated Section 8(c) of the National Labor Relations Act, which grants employers freedom of speech, for the following reason: the rule “makes an employer’s failure to post the Board’s poster an unfair labor practice,” and, by treating the failure to post as “evidence of anti-union” bias in other cases, the rule also treats such a failure “as evidence of an unfair labor practice.” In a concurring opinion, two of the three judges further stated that the NLRB lacked the authority to even promulgate the posting rule because it was not “necessary” to “carry out the express provisions of the Act.”

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