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Labor and Employment Alert: Federal Appeals Court Enjoins Notice Posting Rule; NLRB Responds

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CLIENT ALERT | 4.18.2012

The requirement to post a notice of employee rights under the NLRA that was to have taken effect on April 30, 2012 has once again been delayed. On Tuesday, April 17, the federal court of appeals in Washington, D.C. [granted](#) (pdf) a request for an order enjoining the NLRB's notice posting rule pending an appeal of a lower court decision finding that the rule was lawful. The court of appeals' order followed on the heels of, and specifically referenced, a [decision in South Carolina](#) finding that the rule was unlawful. The court of appeals cited, among other things, the uncertainty regarding the enforceability of the posting requirement as one of the reasons supporting its decision to grant the injunction.

Shortly after the court of appeals ruling, NLRB Chairman Pearce (D) issued a statement regarding enforcement of the notice posting rule. Acknowledging the court's ruling in Washington, D.C., and citing the "strong interest in the uniform implementation and administration of agency rules," Chairman Pearce declared that the NLRB's regional offices will not implement the rule. The delay the NLRB announced will last until "resolution of the issues before the court." At the same time, Chairman Pearce also announced the NLRB's intent to appeal the South Carolina decision, as well as to take its own appeal of the portion of the [lower court's ruling in Washington, D.C.](#) that struck down two of the three enforcement mechanisms in the rule.

These developments are a welcome response to the uncertainties created by the conflicting court rulings. Labor professionals can wait for a court decision on the legality of the NLRB's rule, and should expect to hear more later this year. The court of appeals announced an expedited briefing schedule and set oral argument for September.

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