

## Legal Challenges Delay the NLRB Posting Regulation

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The National Labor Relations Board (NLRB) has agreed to postpone its regulation requiring employers to post a notice informing employees of their right to organize a union. The NLRB says it has determined postponing the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule. One of those legal challenges was filed by the South Carolina Chamber of Commerce. According to the NLRB, the new implementation date will be April 30, 2012; it was January 30, 2012. This is at least the second time the regulation has been pushed back to a later date.

If the new date sticks, South Carolina businesses would be required to post a notice informing employees of their right to organize a union and further informing them of their rights under the National Labor Relations Act. There are a few industries that are exempt from this obligation. The exempt include independent contractors, public sector, railroad, airlines, United States Postal Service, and small employers that conduct less than \$50,000 in business in interstate commerce. All others, not just those that are already union-oriented, will need to comply by the end of April 2012.

Under the rule, the notice must be posted in a conspicuous place with other usual employment notices. It also must be translated if 20 percent of the workforce is not proficient in English. Employers must also post the notice on an intranet or an internet site if that is where personnel rules and policies are customarily posted. The NLRB website says, "Failure to post the notice may be treated as an unfair labor practice under the National Labor Relations Act. The Board investigates allegations of unfair labor practices made by employees, unions, employers, or other persons, but does not initiate enforcement action on its own."

With several challenges to the posting notice regulation, it remains uncertain as to if this regulation will even become final. We advise employers and clients be prepared to wait. We will keep you posted on any final decisions.

The required poster can be downloaded from the NLRB website, including translated versions. Here is a link: <https://www.nlr.gov/poster>.

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