

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

## NLRB Posting Requirement Encounters Delays

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In December 2010, the [National Labor Relations Board \(NLRB\)](#), the federal agency which investigates unfair labor practices, announced a new proposed rule which would require employers to notify employees of their rights under the National Labor Relations Act (NLRA). The final rule was published on August 26, 2011 and provided that the posting requirement was scheduled to become effective on November 14, 2011. Under this rule, all private-sector employers subject to the NLRA are required to post a notice in the same location as other required employment-related posters which states that employees have the right under the Act to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; and to refrain from any of these activities. The notice also provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

Publication of the final rule resulted in criticism from business organizations and prompted several lawsuits, one of which was filed by the National Association of Manufacturers, which alleged that the NLRB does not have the authority under the NLRA to promulgate such a rule. In response to the public's criticisms, and in an effort to provide an opportunity for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses, the NLRB initially delayed the posting requirement until January 31, 2012.

On December 27, 2011, the NLRB announced a second delay in the posting requirement to April 30, 2012. This postponement was made upon the request of a federal district court which is considering one of the legal challenges to the posting requirement. In a statement, the NLRB noted that postponing the effective date from January 31 to April 30 "would facilitate the resolution of the legal challenges" to the rule.

Unions have advocated strongly for the rule, arguing that the notice is a modest measure to assist workers in determining their right to organize. "Just as employers are required to notify their employees of their rights around safety and health, wages and discrimination on the job, this rule gives clear information about their rights under this fundamental labor law so that workers are better equipped to exercise and enforce

them,” AFL-CIO President Richard Trumka said in an August 2011 statement.

The United States Chamber of Commerce has taken the position that the rule, known as the “Employee Rights Notice Posting”, would violate the First Amendment rights of employers.

Stay tuned as this issue continues to work its way through the courts.

If you have questions about this or other employment-related issues, please contact Connie Carrigan, [ccarrigan@smithdebnamlaw.com](mailto:ccarrigan@smithdebnamlaw.com).

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