

“What keeps you up at night?”

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NLRB Again Extends Deadline to Comply with “Notice-Posting” Requirement; White House Forges Ahead with Appointments to NLRB

By Robert C. Nagle

SUMMARY

At the request of a federal court in Washington, D.C., the National Labor Relations Board announced it would extend the deadline for employers to comply with its controversial rule requiring employers to post a notice advising employees of their rights under the National Labor Relations Act. Separately, President Obama announced his intention to make three recess appointments to the NLRB to restore the board to its full five member complement.

COMPLIANCE DEADLINE EXTENDED FROM JANUARY 31, 2012 UNTIL APRIL 30, 2012

Over the holidays, the National Labor Relations Board (NLRB) announced that it would extend the deadline for employers to comply with its controversial rule requiring employers to post a notice advising employees of their rights under the National Labor Relations Act. The Board's action was taken at the request of the federal court in Washington, D.C. hearing a legal challenge to the rule. The Board's ruling states that it has determined that postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule. The new implementation date is April 30, 2012.

If the rule is not further delayed or enjoined by the court, most private sector employers will be required to post the 11-by-17 inch notice on the new implementation date of April 30. The notice is available at no cost from the NLRB through its website, www.nlrb.gov, which has additional information on posting requirements and NLRB jurisdiction. Additional details regarding the rule's requirements also can be found in our previous Alert at http://www.saul.com/common/publications/pdf_2989.pdf.

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PRESIDENT OBAMA MAKES THREE RECESS APPOINTMENTS TO NLRB, RESTORES QUORUM

Separately, on January 4, 2012, President Obama announced his intention to "recess appoint" three new Members of the Board: Sharon Block (D), Terence Flynn (R) and Richard Griffin (D). With the expiration of the recess appointment of Member Craig Becker (D) earlier this month, the Board currently lacks a quorum. The President's action will serve to restore the Board to its full five member complement, which it has not had since August 2010. Ms. Block is a former NLRB and Senate committee attorney who has been serving as the Labor Department's deputy assistant secretary for congressional affairs. Mr. Griffin is currently serving as general counsel of the International Union of Operating Engineers (IUOE) and has spent much of his legal career working for the IUOE, in addition to an earlier stint with the NLRB. Mr. Flynn currently serves as the Chief Counsel to Member Brian Hayes (R) and previously served as Chief Counsel to former Board Member Peter Schaumber. Based on these appointments, it is expected that the Board's recent pro-union slant will continue.

REACTION DIVIDES ALONG PARTISAN LINES

Organized labor and their allies in Congress praised the President's action; while Republicans in Congress and various business groups, including the U.S. Chamber of Commerce, blasted the move. The President's decision to make these appointments during a Senate recess means that the appointees do not require Senate approval, although some issues have been raised as to whether the appointments are valid because of a maneuver by Republicans

to prevent Congress from actually going into recess. Previously, on December 19, all 47 Republican Senators signed a letter urging the President to refrain from recess appointing Ms. Block or Mr. Griffin to the Board, or making any recess appointments to the Board.

PROSPECTS FOR EMPLOYERS

The bottom line for employers is that the Board may soon be back at full operational strength, with a 3-2 Democratic majority generally sympathetic to union concerns. Employers can expect action on a variety of issues. It remains to be seen whether the Board will take up controversial proposals from last year, including the remainder of the "quickie-election" proposal left for further consideration by the three member Board at the end of the year.

This Alert was written by Robert C. Nagle, a member of the firm's Labor, Employment and Employee Benefits Practice Group. Robert can be reached at 215.972.7760 or rnagle@saul.com. This publication has been prepared by the Labor, Employment and Employee Benefits Practice Group for information purposes only.

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