



May 13, 2013

CIRCUIT COURT VACATES NLRB NOTICE POSTING REQUIREMENT

On March 5, 2012 we sent an E-let (which can be found [here](#)) that the U.S. District Court for the District of Columbia decided that the National Labor Relations Board (NLRB) rule requiring posting Notices in the work place advising employees of their rights under the National Labor Relations Act (NLRA) was within "the Board's broad rule making authority to implement the provision of the Act." (*National Association of Manufacturers v. NLRB*, May 7, 2013). That case was appealed to the United States Court of Appeals, District of Columbia Circuit Court, which vacated the lower court's decision. The Court stated that "the expressing of any views, argument, opinion, or dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice" if "such expression contains no threat of reprisal or force or promise of benefit."

The Court went on to say that Section 8(c) of the NLRA protects an employee's right not to speak as well as its right to speak, and because the notice/posting rule treats a failure to speak by refusing to post the notice as an unfair labor practice or evidence of an unfair labor practice, it is inconsistent with Section 8(c) of the NLRA. Accordingly, the rule has been vacated in its entirety. This ruling effectively precludes the NLRB from enforcing the notice posting rule unless and until it retains a contrary decision from the United States Supreme Court, which, in our opinion, is unlikely. As a result of this Court's ruling, for those employers who posted the Notices, they can be removed.

If you have any questions concerning this topic, please contact the member of our GrayRobinson [Employment & Labor](#) law team with whom you work.

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