



MURPHY HESSE  
TOOMEY & LEHANE LLP

Attorneys at Law

**Labor & Employment Alert  
March 2012**

**Federal Court Partially Overturns NLRB Posting Regulation:  
Posting Rule Remains, Enforcement Provisions Invalidated**

*For a discussion of these and other Legal issues, please visit our website at [www.mhtl.com/law](http://www.mhtl.com/law). To receive legal updates via e-mail, contact [information@mhtl.com](mailto:information@mhtl.com).*

On March 2, 2012, the U.S. District Court for the District of Columbia partially invalidated the National Labor Relations Board's (NLRB) recently-promulgated posting regulation. In the case of *National Association of Manufacturers v. National Labor Relations Board, et al.*, Judge Amy Berman Jackson issued a decision in response to the plaintiffs' assertion that the NLRB had exceeded its authority in requiring employers subject to the National Labor Relations Act to post a notice advising employees of their rights under the Act.

Judge Jackson's ruling upheld the right of the NLRB to require such a posting—a requirement which is scheduled to take effect on April 30, 2012.

The Court invalidated those portions of the rule which would (1) make an employer's failure to post the NLRB notice an unfair labor practice; and (2) potentially toll the statute of limitations in every occurrence of claims brought by employees against employers who failed to post the notice. These portions were deemed to exceed the Board's authority under the Act.

The Court noted that the law did not prohibit the Board from considering an employer's failure to post the notice an unfair labor practice, and did not prohibit tolling of the statute of limitations due to an employer's failure to post. The Board, however, must make these types of determinations on a case-by-case basis, and cannot enact a *per se* rule.

The National Right to Work Foundation, a co-plaintiff in the case, has already stated that it intends to appeal. Another similar case, brought by the United States Chamber of Commerce and South Carolina Chamber of Commerce, is still under advisement in the District of South Carolina. Arguments were heard in that case on February 6, 2012, and a decision is pending.

Phone (617) 479-5000

Fax (617) 479-6469

[www.mhtl.com](http://www.mhtl.com)



MURPHY HESSE  
TOOMEY & LEHANE LLP

Attorneys at Law

## Labor & Employment Alert March 2012

The NLRB's posting regulation mandates the posting of an 11" x 17" Notice in virtually every private sector workplace in the country – unionized or not – informing employees in considerable detail of their rights under the National Labor Relations Act. The implementation date for this posting is April 30, 2012. At least as things stand now, Judge Jackson's March 2 ruling does not appear to affect the current implementation date. We will keep you apprised of any further developments as they occur.

\*\*\*\*\*

*This Alert was prepared by Katherine A. Hesse, a partner in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Hesse, the attorney assigned to your account, or your own labor counsel.*

*Murphy, Hesse, Toomey & Lehane, LLP, is a multi-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm emphasizes labor & employment law, employee benefits law, municipal law, public sector labor law, education law, special education law, and related litigation.*

This alert is for informational purposes only and may be considered advertising

©2012 MHTL

2

Phone (617) 479-5000

Fax (617) 479-6469

[www.mhtl.com](http://www.mhtl.com)