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NLRB Update

President Obama recently made three recess appointments to the National Labor Relations Board (NLRB). With these appointments, the Board again will be at full strength having five members: three Democrats and two Republicans. Prior to the appointments, the Board only had two members, which left it without a quorum and unable to decide cases or issue rules. Business groups are expected to file a lawsuit challenging the appointments and raising issue with whether the NLRB has a quorum since Congress did not technically recess.

The NLRB recently issued a significant and controversial decision that will impact both unionized and non-unionized employers' ability to rely upon arbitration agreements. In *D.R. Horton, Inc.* the NLRB held that it is a violation of the National Labor Relations Act (NLRA) to require employees to sign an arbitration agreement that prevents them from joining together to pursue employment-related claims in any forum, including a court or before an arbitrator. According to the NLRB, requiring such a waiver violates employees' rights under Section 7 of the NLRA to "engage in . . . concerted activities for the purposes of collective bargaining **or other mutual aid or protection**" (emphasis added). In response to a recent U.S. Supreme Court case, *AT&T Mobility v. Concepcion*, which held that consumers may lawfully agree to waive their right to file a class action, many employers have added class action waiver provisions to their arbitration policies. Those provisions are now deemed to violate the NLRA. The NLRB distinguished the Supreme Court's decision by finding that employers cannot require employees to waive their rights to engage in concerted activities under the NLRA, including the right to join in class actions. The Board's decision will almost certainly be appealed and we will keep you posted.

In other news, NLRB Chairman Mark Gaston Pearce recently announced the appointment of Terry A. Morgan as the new Regional Director of Region 7, which is based in Detroit and has a satellite office in Grand Rapids. Ms. Morgan was previously a Deputy Assistant General Counsel in the Division of Operations-Management. She has experience as a field attorney in Ohio (Region 8) and New York (Region 2).