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Court Finds NLRB's Employee Rights Notice Posting Rule to be Unlawful and Delays Requiring Posting of the Notice

As we previously reported, the National Labor Relations Board (NLRB) has issued a rule which will require most private-sector employers to post an 11x17 inch poster that details the rights of employees under the National Labor Relations Act (the "Employee Rights Notice"). That notice, among other things and most significantly, informs employees that they have the right to organize a union to negotiate with their employer concerning wages, hours, and other terms and conditions of employment. More information concerning the Employee Rights Notice can be found in Honigman's earlier Labor Alerts on the subject. **Click to view** the "New NLRB Rule Requires Employers To Post Notices Regarding Employee Rights Under the NLRA" alert; **click to view** the "Labor Alert Update: NLRB Posting of Employee Rights Requirement" alert; **click to view** the "National Labor Relations Board Delays Notice-Posting Requirement Until April 30, 2012" alert. Covered employers were required to begin posting the Employee Rights Notice by April 30, 2012.

On April 13, 2012, however, a federal district court in South Carolina found that the NLRB exceeded its authority in issuing the rule requiring the posting of the Employee Rights Notice. If this case is followed in locations other than South Carolina, there is no requirement to post the Employee Rights Notice. This latest court decision conflicts with the decision of another federal district court in Washington, D.C. previously discussed in a recent Honigman Labor Alert. **Click to view** the "National Labor Relations Board Notice-Posting Requirement Begins April 30, 2012" alert. The fate of the Employee Rights Notice rule has yet to be definitively decided by the courts and may ultimately be determined by the U.S. Supreme Court. Until further direction is given by the courts, we recommend taking a calculated risk and not posting the Employee Rights Notice.

Honigman will continue informing you about developments concerning the Employee Rights Notice. If you have any questions regarding this important issue, please contact one of our Labor and Employment Department attorneys listed on this alert.