

## Circuit Refuses Enforcement Of Board's *Du Pont* Decision Regarding Changes To Benefits

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The D.C. Circuit handed a win to employers last week when it refused to enforce the Board's finding that Du Pont Co. had committed an unfair labor practice when it changed its health care plan during negotiations for a new collective bargaining agreement after the old agreement had expired. Although Du Pont had routinely made changes to its benefits package prior to an annual enrollment period, the Board found that when Du Pont made these annual changes during bargaining for a new contract, the changes were improper unilateral changes and constituted an unfair labor practice.

Reviewing this decision, the D.C. Circuit found that the Board "failed to give a reasoned justification for departing from its precedent." The Court pointed to the Board's decision in [Courier-Journal](#), 342 N.L.R.B. 1093 (2004), which found in part that an increase in health insurance premiums during contract negotiations was not a unilateral change when the employer had an established past practice of making such a benefits change. The D.C. Circuit was not persuaded by the Board's attempt to distinguish the facts of *Courier-Journal* from the current Du Pont case and remanded the case back to the Board for a decision that conforms to its prior precedents.

This decision is good news for employers on several fronts. First, it confirms that when an employer has an established past practice of making annual benefit changes and such a change is made after a contract has expired, it will be viewed as the status quo and not a unilateral change. But employers must still be careful that all changes made during negotiations after a contract has expired, including annual benefit changes, are supported by an established past practice. Second, the D.C. Circuit's decision demonstrates that courts will not allow the NLRB to simply depart from its past precedent without explanation. This could prove critical, as recent Board decisions, such as [Specialty Healthcare](#), 357 NLRB No. 83 (2011), are challenged in court by employer groups who also argue that such decisions are a departure from past Board precedent.

The D.C. Circuit case is *E.I. Du Pont de Nemours & Co. v. NLRB*, No. 10-1300 (D.C. Cir. June 8, 2012), available [here](#).

The Board's original decision in *E.I. Du Pont De Nemours, Louisville Works* is available [on the Board's website](#).

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