

Upon Further Review: A Different District Court Finds NLRB Posting Rule Unlawful

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On April 13, Judge David C. Norton of the United States District Court for the District of South Carolina, Charleston Division, ruled that the NLRB's final rule requiring the posting of a general notice informing employees of their Section 7 (of the National Labor Relations Act, the "NLRA") rights exceeded the statutory rights of the NLRB, violated the Administrative Procedures Act and, thus, was unlawful.

In his decision, Judge Norton found that Section 6 of the NLRA, which confers rulemaking authority on the NLRB, only allows the NLRB to make rules and regulations "as may be necessary to carry out the provisions of the [NLRA]." He further found that, though possibly helpful, the posting requirement was not necessary for the NLRB to carry out the provisions of the NLRA. In reaching that determination, Judge Norton analyzed the congressional intent behind the NLRA, specifically Section 6, and did not find anything either in the statute itself or in the legislative history pointing to an intent to give the NLRB the authority to promulgate the notice posting requirement.

Earlier this year, a different District Court [struck down part of the NLRB's Notice Posting Rule](#), but upheld the Board's authority to promulgate and require posting of the Notice. The conflict among the courts means that further litigation about this issue is likely. Stay tuned.

Judge Norton's ruling can be found [here](#). Our description of the final rule can be found [here](#).

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