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***Your Employment Law Bulletin from***

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**KRUCHKO &  
FRIES**

**January 9, 2012**

**Obama's Recess Appointments to the NLRB  
Guarantee a Pro-Labor Agenda in 2012**

**On January 4, 2012, President Obama named three new members to the National Labor Relations Board creating a 3-2 Democratic majority at the Board and ensuring that a pro-labor agenda will continue to move forward in 2012. There can be little doubt that the NLRB will now use its regulatory and enforcement powers to provide greater assistance to union organizing and bargaining efforts at the expense of individual employee and employer rights.**

**The President used recess appointments to give the Board a full contingent for the first time in more than a year. Obama appointed Deputy Labor Secretary Sharon Block, union lawyer Richard Griffin and NLRB counsel Terence Flynn to fill the vacancies on the Board. Block and Griffin are Democrats, while Flynn is a Republican. Block and Griffin are viewed as extremely favorable to labor and they are expected to join Board Chairman Mark Pearce in voting for continued changes to Board procedures that will make it easier for unions to gain access to unrepresented employees and win representation elections.**

**The recess appointments may be challenged by businesses adversely affected by decisions of the newly-constituted Board. The President has authority under the Constitution to make recess appointments when the Senate is not in session. Republicans argue that the Senate was not in recess because "pro forma" sessions have been occurring every three days during the holiday recess because a member of the Senate has entered the chamber and gavelled in and out. The President's legal advisors take the position that the Senate is in recess despite the pro forma sessions because the Senate made it clear that it would not be conducting any business during the very brief pro forma sessions.**

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