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***Your Employment Law Bulletin from***

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**KRUCHKO &  
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**January 3, 2012**

**NLRB's Notice-Posting Rule Postponed**

The NLRB has announced that it will postpone the effective date of its employee rights notice-posting rule until April 30, 2012. This should not be construed as a sign that the agency plans to put the brakes on its pro-labor agenda. There can be little doubt that the NLRB will continue to use its regulatory and enforcement powers to assist union organizing and bargaining efforts in 2012.

With the expiration of the recess appointment of Board member Craig Becker, however, the NLRB is left with only two members. As a result, the agency does not have the three-member quorum necessary to exercise its adjudicatory and rulemaking authority. President Obama has already proposed two extremely pro-labor nominees for the empty seats on the Board. On December 14, 2011, Obama nominated Sharon Block and Richard Griffin to replace Becker and Wilma Liebman, whose term on the NLRB expired in August, 2011.

Block is currently a deputy assistant secretary of labor and is a former senior aide to Senator Edward Kennedy. Griffin is the general counsel for the International Union of Operating Engineers. A filibuster by Republican senators will likely prevent either individual from being confirmed by the Senate. There is some concern that the President will withdraw the formal nominations of Block and Griffin and, instead, give them recess appointments. The President has constitutional authority to make such appointments without congressional approval if the Senate is not in session. Since the holidays, however, Republican congressional leaders have used a procedural gambit to keep the Senate "in session" by having a handful of senators gavel in and out for a few minutes every few days.

Although a recess appointment lasts only until the end of the session of Congress during which it is made, the President may want Block and Griffin to begin their terms with the NLRB right away so that the agency can continue to progress its pro-labor agenda in 2012. Kruchko and Fries will continue to monitor this situation and report any recess appointments if they occur.

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