

## Update: National Labor Relations Board (NLRB) to Appeal Recess Appointment Case to the U.S. Supreme Court

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Earlier this year, a unanimous three-judge panel of the United States Court of Appeals for the District of Columbia held that President Barack Obama's recess appointments of three **National Labor Relations Board (NLRB)** members exceeded the President's constitutional authority. The ruling called into question hundreds of decisions rendered by the NLRB since the recess appointments were made, including decisions affecting non-union workplaces.

The NLRB has announced that it was bypassing its opportunity to have the case reconsidered by the full D.C. Circuit Court and instead is planning to file an appeal to have the case heard by the U.S. Supreme Court. The NLRB's petition must be filed with the Supreme Court by April 25, 2013, meaning that it will be unlikely for the Supreme Court to hear the case (assuming it grants the NLRB's petition) before the Court's next term begins in October.

Until the Supreme Court renders a final decision, we recommend that employers continue operating as though all recent NLRB decisions are still valid, including recent rulings on social media use by employees in the workplace and employee handbook statements on "at will" employment. We will continue to provide timely updates regarding this important case as it develops.

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