

UNITED STATES SUPREME COURT FINDS OBAMA'S NLRB APPOINTMENTS INVALID

In a ruling that will have far reaching implications for future Presidential appointments, the U.S. Supreme Court today struck down three Obama recess appointments to the National Labor Relations Board (*NLRB v. NOEL CANNING ET AL.*)

For the NLRB, it means the current Board members will be forced to revisit hundreds of decisions issued by the members who were appointed by President Obama in January 2012. The NLRB now has a full complement of Senate-confirmed Board members who can now revisit the decisions. NLRB Chairman Pearce issued a statement today pledging the Board would work diligently to review those past decisions invalidated by today's ruling.

However, the practical implications for employers are not fully clear. NLRB decisions issued by the invalidated Board no longer have the force of law, but employers should assume those decisions will be reissued after review by the current Board. It is also likely that Board action on pending cases and initiatives may be delayed while it goes through the process of re-evaluating those past cases.

The Court's decision did make clear the President has the right to make future recess appointments but not when the Senate states it is not in recess and when the recess is of short duration. During the recess at issue in this case, the Senate did not officially recess and instead used pro forma sessions every three days to stay in session. Accordingly, the President's decision to use the recess appointment power was unconstitutional. This is a classic case of Constitutional separation of powers issues but because of the federal agency involved, it also has implications for all private sector employers subject to the NLRB's jurisdiction.

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