

## **Just post it: NLRB requiring that employers provide notice of employee rights**

August 31, 2011 by [Brendan Fitzgerald](#)

As if there weren't already enough postings required for workplaces, the NLRB has now joined the party. On August 25, 2011, the NLRB issued a final rule that requires employers to inform employees of their rights under the National Labor Relations Act. Employers have until November 14, 2011 to post the required notice.

### **Who Must Post What?**

The rule applies to the majority of employers covered by the Act, regardless of whether the employer has any union employees. As the NLRB noted previously, the rule is designed to capture the "great majority" of small businesses in the United States.

The notice must contain a detailed listing of employees' rights under the Act. In fact, the NLRB previously provided a sample of the proposed notice. Given that the sample poster provided in the NLRB's proposed rule seemed to be little more than a pro-union appeal to employees, the final rule specifically notes that employers are free to post their own notice emphasizing an employee's right to refrain from union activity. Employers should do so, if only to highlight that employees have no obligation to join a union.

The posting must be at least one 11-inch by 17-inch poster or two 8.5-inch by 11-inch posters taped together. The notice must be posted in English, but if more than 20% of employees are not proficient in English, the employer must also provide the posting in the language spoken by those employees. The NLRB will provide a free copy of the poster, in English and other languages, on or before November 1, 2011.

The notice must be posted conspicuously, including in all places where notices to employees are customarily placed. Electronic posting on an internet or intranet is required, too, if an employer customarily posts policies in those places. Employers need not, however, distribute the posting via email, Twitter or other electronic means.

### **Sanctions for Failing to Post**

The NLRB will treat a failure to post as an unfair labor practice charge under the Act, which normally will mean only that the employer will be required to post the notice. The NLRB may also extend the 6-month statute of limitations for filing unfair labor practices against employers who fail to post the notices. Most importantly, willful failure to post notices may be considered evidence of unlawful motive in unfair labor practice cases.



Look for a PDF copy of the poster here when the NLRB makes it available. Since employers have other posting requirements, adding one more page should not be too onerous. Just post it and avoid the inevitable headaches of noncompliance.

For more information on this Final Rule, please see the McDonald Hopkins Alert "[NLRB issues final rule requiring employers to post notice of employees' rights.](#)"