



Forward
Attorney Advertising

September 2011

National Labor Relations Board Exerts Its Authority Over All Employers: Mandatory Poster Effective November 14, 2011

By [Julie Levinson Werner, Esq.](#)

As a result of a recently finalized rule issued by the National Labor Relations Board (NLRB), essentially all private-sector employers, whether unionized or not, will be required to notify employees of their rights under the National Labor Relations Act (NLRA) by posting an employee rights notice in the workplace no later than November 14, 2011.

With very limited exceptions, effective November 14, 2011, private employers will be required to post a notice in the workplace in conspicuous locations where they are readily seen by employees. The notice must be posted in English and in another language if at least 20 percent of the employees are not proficient in English and speak that other language. Additionally, employers who customarily post notices to employees regarding personnel rules or policies on an Internet or company intranet site also will be required to display the notice on those sites. Distributing the notice via e-mail or including it with a pay stub will not fulfill the physical and electronic posting requirements. Failure to post the notice may be treated as an unfair labor practice under the NLRA.

The NLRB investigates allegations of unfair labor practices made by employees, unions, employers and other persons. While the NLRB cannot impose fines, an employer's violation may be treated as evidence of unlawful motive in a case in which motive is an issue, and may prevent the running of the statute of limitations.

This new notice requirement is similar to the notice already required for federal contractors. It covers employees' rights to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; and to refrain from any of the activities. The notice contains examples of unlawful employer and union conduct, as well as contact information for employees to file complaints and resolve questions.

A copy of the required 11x17 poster will be available at no cost from the NLRB upon request, and is downloadable from the NLRB's website, www.nlr.gov/poster.

Shortly after the NLRB's announcement about the rule, the National Association of Manufacturers (NAM) filed a lawsuit in the U.S. District Court for the District of Columbia to stop the NLRB from moving forward with the rule. The lawsuit asks the NLRB to set aside promulgation of the rule and alleges that the NLRB is acting outside the scope of its jurisdiction. Indeed, the rule represents the first time the NLRB has required the posting of such a notice since the NLRA was passed in 1935. We will monitor this effort to enjoin the rule's implementation and advise of any developments. But absent any action by the courts, the final rule becomes effective November 14, 2011.



Contact Us

[Julie Levinson Werner, Esq.](#)
973.597.2550
jwerner@lowenstein.com

Related Services

[Employment & Labor](#)
[Employment Law](#)
[Employment Litigation](#)
[Labor Law](#)

Related Publications

[Court Opens Pandora's Box for Lost Wages in Retaliation Cases](#)
8/31/2011

[Employment Litigation and Insurance Coverage](#) 8/2/2011

[Goliath Wins: U.S. Supreme Court Denies Class Certification in Dukes v. Wal-Mart Stores, Inc.](#) 6/21/2011

[New Jersey Supreme Court Opens Pandora's Box for Lost Wages in Retaliation Cases](#) 6/15/2011

[Final Regulations to ADAAA Make It Easier for Individuals to Establish a Disability Under the ADA](#) 5/24/2011

[Social Media in the Workplace](#)
5/9/2011

[The Supreme Court Holds That Oral Complaints Are Protected Activities Under the Anti-Retaliation Provisions of the Fair Labor Standards Act](#)
3/25/2011

This action by the NLRB follows other measures by the NLRB to assert itself in the workplace, including those workplaces that are nonunionized. For example, over the past year the NLRB has brought several charges against businesses that terminated employees who criticized their employers on Facebook and other social networking sites. According to the NLRB, such comments constituted protected concerted activity. Such actions demonstrate that employers who perceive the NLRB as being irrelevant to their organizations should reconsider that notion.

While employers with employees already unionized likely will see little impact from the new rule other than the actual posting requirement itself, nonunionized employers may be faced with employees raising questions about their rights under the NLRA. Accordingly, it is important for nonunionized employers to be aware of their rights in resisting a union-organizing campaign as well as the rights of their employees.

If you have any questions with respect to this alert, please contact [Julie Levinson Werner](#) or any of the members of the firm's [Employment & Labor](#) practice group at 973 597 2500. We would also be pleased to provide you with assistance with respect to other employment practices and workplace compliance issues.

Send an e-mail to addressupdate@lowenstein.com if you would like to unsubscribe from this mailing list or update your contact information.

Lowenstein Sandler makes no representation or warranty, express or implied, as to the completeness or accuracy of the Alert and assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. Readers should consult legal counsel of their own choosing to discuss how these matters may relate to their individual circumstances.

www.lowenstein.com

New York
1251 Avenue of the Americas
New York, NY 10020
212.262.6700

Palo Alto
590 Forest Avenue
Palo Alto, CA 94301
650.433.5800

Roseland
65 Livingston Avenue
Roseland, NJ 07068
973.597.2500

© 2011 Lowenstein Sandler PC. In California, Lowenstein Sandler LLP