



Legal Alert: Board Releases Notice of Employee Rights Poster; Lawsuit Filed to Block Implementation of Final Rule

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Executive Summary: On September 8 the National Association of Manufacturers (NAM) filed a federal suit seeking to block implementation of a new rule issued by the National Labor Relations Board (NLRB) requiring many employers, both union and non-union, to display a notice in the workplace explaining employee rights under the National Labor Relations Act (NLRA). NAM's suit alleges that the NLRB exceeded its authority by promulgating the rule. The rule will take effect November 14, 2011, unless the court blocks it.

Posting Requirement

The notice required by the Board's final rule, "Notification of Employee Rights Under the National Labor Relations Act," is now available for downloading from the agency's web site at: <http://www.nlr.gov/poster>.

As discussed in our August 30, 2011 Legal Alert, *NLRB to Require Posting of Notice of Employee Rights*, available at <http://www.fordharrison.com/shownews.aspx?Show=7546>, the Board's rule requires employers covered by the NLRA to post this notice "in conspicuous places where [it] is readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted." The notice requirement does not apply to employers who are not covered by the NLRA, including, among others, any person subject to the Railway Labor Act, as well as entities over whom the Board has been found not to have jurisdiction or over which the Board has chosen not to assert jurisdiction.

Manufacturing Group Sues to Block Board Notice Rule

The National Association of Manufacturers (NAM) has filed suit in federal court seeking to block the implementation of the final rule. See *National Ass'n of Manufacturers v. National Labor Relations Board* (D. D.C. filed Sep. 8, 2011). In the lawsuit, NAM claims the Board exceeded the authority granted to it by the NLRA by promulgating the rule requiring posting of the notice and purporting to create a new unfair labor practice based upon an employer's failure to post the notice. Additionally, the lawsuit claims that the Board has no authority to require an employer to post any notice in the absence of a representation petition or an unfair labor practice charge. Finally, the lawsuit claims that the Board exceeded its authority by providing that an employer's failure to post the notice may toll the statute of limitations

in an unfair labor practice charge.

The lawsuit asks the court to declare the rule null and void in its entirety and permanently enjoin the Board from implementing the rule. Although the Board has not yet filed an answer to the complaint, it will likely argue that other government agencies have required employers to display posters on other analogous topics, such as employee safety (OSHA), anti-discrimination laws (EEOC), and workers' compensation rights (state agencies). In light of these similar notice requirements imposed by other federal and state agencies, many knowledgeable observers believe there is only a very slight chance of NAM prevailing, either in whole or part.

The outcome of this litigation and when the court would issue a decision are uncertain. Thus, employers must plan to comply with the posting requirement by November 14.

If you have any questions regarding the posting requirement or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.