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NLRB Mandates Posting Notice of Employee Rights

On August 25, 2011, the National Labor Relations Board ("NLRB") issued a final regulation **that, starting November 14, 2011, virtually all private sector Employers must post a notice informing employees of their rights under the National Labor Relations Act ("NLRA")**. The posting requirement applies to unionized and non-unionized Employers alike.

Notice Requirements

The notice will need to be at least 11"x17" and in a font size and style prepared by the NLRB. The notice must be posted in "conspicuous places where they are readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted." Employers who customarily communicate with employees about policies and procedures via the Internet or an intranet site, must "prominently" display the notice on that site. Copies of the notice may be obtained from the NLRB.

Content of Notice

The notice includes information about the NLRA, the NLRB and the rights of employees to:

- Organize a union
- Form, join or assist a union
- Bargain collectively
- Discuss wages, benefits and other terms and condition of employment
- Raise complaints
- Strike or picket
- Choose not to do any of these activities

The notice sets out specific examples of actions that are unlawful under the NLRA and how employees may file a charge with the NLRB. A copy of the text of the notice is attached.

Translation for Non-English Speaking Employees

If 20 percent or more of the employees at a work site speak a language other than English, the notice must be posted in the language spoken by those employees.

Penalties for Failure to Comply

An Employer who fails to post the notice will be considered to have engaged in an unfair labor practice. The NLRB may order the employer to post the notice among other remedies. Potentially this could include e-mailing, mailing or reading the notice to employees. Failure to post the notice could result in tolling of the NLRA's six month limitations period for filing unfair labor practice charges. The failure to post could be used by the NLRB as evidence of unlawful anti-union motive in situations where motive is relevant.

Implications

Employers may be tempted to simply view the posting requirement as similar to those existing under other Federal and State laws (e.g. discrimination, wage and hour, workers' compensation, etc.). But this is just the opening salvo of a concerted effort by the Federal Government to make it easier for unions to organize.

Also in the pipeline is a NLRB proposed regulation designed to dramatically shorten the time period between filing of a petition and an election. And the Department of Labor has a

proposed regulation that will make it more difficult for counsel to advise Employers regarding union activity. **The time to begin assessing your vulnerability to union organizing (and how you might respond) is now.**

If you have questions regarding the notice or the NLRA, please contact your Thompson Coburn attorney, or Timothy J. Sarsfield, Esq., who may be reached at 314-552-6432 or tsarsfield@thompsoncoburn.com. Alternatively, feel free to contact any member of Thompson Coburn's Labor and Employment group, including Mike Duffee, a seasoned NLRA practitioner who recently joined Thompson Coburn's Chicago office.

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Sample Text

Text of Required Posting

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.

Sample Text

- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any

Sample Text

person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>.

You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).