



## Legal Alert: NLRB Proposes Rule Requiring Posting of Employee Rights Under the NLRA

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The National Labor Relations Board (NLRB) has published a proposed rule that would require all employers covered by the National Labor Relations Act (NLRA), including unions in their capacity as employers, to post a notice informing employees of their rights under the NLRA. The proposed rule does not apply to employers who are not covered by the NLRA such as the U.S. government, any wholly owned government corporation, any Federal Reserve Bank, any state or political subdivision and any employer covered by the Railway Labor Act.

According to the Board, many employees are unaware of their rights under the NLRA and the NLRA's lack of notice requirement is an "anomaly" among major federal employment laws. Thus, the Board believes that informing employees of their statutory rights is central to advancing the NLRA's promise of "full freedom of association, self-organization, and designation of representatives of their own choosing."

The proposed rule requires employers to post a notice informing employees of their NLRA rights, as well as Board contact information and information regarding basic enforcement procedures under the NLRA. The NLRB will make the notice available on its web site, <http://www.nlr.gov>, and in print. The language of the proposed employee notice is included as Appendix A to the proposed rule and is available on the NLRB web site at: [http://www.nlr.gov/About\\_Us/news\\_room/Notice\\_for\\_Rulemaking/2010-32019\\_PI.pdf](http://www.nlr.gov/About_Us/news_room/Notice_for_Rulemaking/2010-32019_PI.pdf).

**Language of Federal Labor Notice Used.** The Board took the language of the proposed rule from the Department of Labor's (DOL) rule requiring certain federal contractors to post a notice of employee rights. Instead of quoting the language of Section 7 of the NLRA, this rule provides a detailed description of employee rights derived from Board and court decisions and includes examples of conduct that may violate the NLRA. Because the language of the Board's proposed rule is the same as that of the DOL's final rule, federal contractors who have complied with the DOL rule will not be required to post a second notice under the Board's final rule.

**Notice Must be Posted Electronically and in Hard Copy.** Employers will be required to post a hard copy of the employee notice in conspicuous places, including all places where employee notices customarily are posted. The proposed rule also requires employers to take steps to ensure that the notice is not altered, defaced, covered by other material or otherwise

rendered unreadable. Employers who customarily communicate with their employees electronically must also provide the employee notice electronically, either by e-mail or posting on an intranet or internet site and/or by other electronic means. If the majority of employees speak a language other than English, the notice must be provided in that language.

**Sanctions.** The Board proposes the following sanctions for failure to post the notice: (1) finding the failure to post the required notices to be an unfair labor practice; (2) tolling the statute of limitations for filing unfair labor practice charges against employers who fail to post the notices; and (3) considering the knowing failure to post the notices as evidence of unlawful motive in unfair labor practice cases.

**Dissenting Board Member Hayes Questions Board's Authority to Issue Rule.** Board Member Hayes, who did not participate in the decision to grant the rule-making petitions or in drafting the proposed rule, stated that he would have denied the petitions because he believes the Board lacks the statutory authority to promulgate or enforce this type of rule. He notes that the lack of express language in the NLRA requiring a posting of individual rights is a strong indicator, "if not dispositive," that the Board lacks the authority to impose such a requirement. Additionally, Member Hayes encourages public comment addressing the issue of the Board's authority to impose or enforce such a rule.

**Submission of Comments.** Comments regarding the proposed rule (identified by 3142-AA07) may be submitted electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. Alternatively, written comments may be submitted to: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570. Comments regarding this proposed rule must be received by the Board on or before February 22, 2011.

### **Employers' Bottom Line**

The imposition of this proposed rule could have a significant impact on employers' efforts to remain union-free because of the way the notice is worded. Additionally, the failure to post the required employee notice could result in severe sanctions to the employer.

We will keep you informed regarding the status of this proposed rule. If you have any questions regarding the proposed rule or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.