

## NLRB To Require Workplace Postings on Employees' Rights to Organize

In accordance with a National Labor Relations Board (the "Board") rule that was issued last week, almost all private employers will be required, as of November 14, 2011, to post notices in their workplaces informing employees of their rights under the *National Labor Relations Act* (the "Act"), including their rights to form and join unions, to bargain collectively through a union chosen by employees over their wages, hours and other conditions of employment, and to take collective action to improve their working conditions. Employers who fail to comply with this rule will risk liability for an unfair labor practice under the Act. The Board will make copies of the notice available at no charge on its website and in its regional offices by November 1.

The mandatory posting is an 11" x 17" poster to be provided by the Board. ([Click here](#) to view a copy of the Employee Rights Poster.) In addition, employers will be required to electronically post the Board-mandated notice on any intranet or internet site that the employer commonly uses to communicate rules and policies to employees. Both the physical and electronic notices must be posted "no less prominently than other notices to employees." The rule applies to any employer covered by the Act (generally, all businesses whose annual volume of business exceeds \$50,000 except railroads, airlines and those engaged in agriculture), without regard to whether the employer's workforce is unionized or not.

When at least twenty percent (20%) of an employer's workers are not proficient in English and speak a different language, the employer will be required to post the notice in other languages. The Board will make translated versions of the notice available, along with the English language version, as of November 1. An employer will not be held responsible for failing to post the notice in a language other than English if a translation in such language has not yet been made available by the Board.

Employers who fail to comply with this new posting requirement may be held liable for committing an unfair labor practice under §8(a)(1) of the Act, which forbids an employer to "interfere with, restrain, or coerce employees" in the exercise of their rights under the Act. The Board will be able to pursue a cease-and-desist order against a noncompliant employer, as well as seek unspecified "additional remedies." In addition, the regulation provides that the usual six month window for filing unfair labor practice charges concerning any employer actions will not run in circumstances where an employer fails to post the required notice, thereby permitting employees or a union to file such charges without any time limits. In the event of a "knowing and willful failure" to post the notice, the regulation will also permit the Board to infer an unlawful motive in any unfair labor practice case concerning any employer actions.

For more information on this notice requirement, or on employee rights and employer obligations under the *National Labor Relations Act* more generally, contact an attorney in Ropes & Gray's [Labor and Employment](#) department.