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An important Labor & Employment law update from the law firm of Jackson Walker.

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NLRB Issues Final Rule on Employee Rights Notice Posting

By Sarah Mitchell

On August 25, 2011, the National Labor Relations Board (the "Board") announced that it has issued a final rule requiring private-sector employers subject to the National Labor Relations Act ("NLRA") to notify employees of their rights under the NLRA by posting a notice. This new rule is scheduled to take effect on November 14, 2011, and will impact virtually all employers.

The Notice

On or before November 14, 2011, employers must post the 11-by-17-inch notice where other workplace notices are typically posted. Additionally, employers must post the notice on an intranet or an internet site if personnel rules and policies are customarily posted there.

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 the other language. The Board will provide copies of the notice on request at no cost to employers beginning on or before November 1, 2011. Additionally, employers may download the notice from the Board's website or purchase the notice from a commercial supplier.

The content of the notice is similar to one already required by the Department of Labor for federal contractors and states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, and to bargain collectively with their employer. The notice also provides examples of unlawful employer and union conduct and instructs employees how to contact the Board with questions or complaints. Very little of the notice is dedicated to informing employees of their rights to refrain from or not participate in the union-related activities described in the poster, so the burden falls on union-free employers to inform employees of their right to say "no" to unions or unionization and to explain the advantages of remaining union-free.

Penalties and Enforceability

The NLRA does not specifically call for any postings of the sort required under the Board's new rule, and the Board admittedly lacks the authority to levy fines against employers who fail to comply with the new posting rule. However, the Board has asserted that failure to post the notice may be treated as an unfair labor practice under the NLRA and may result in the extension of the statute of limitations for filing charges involving other unfair labor practice allegations against employers who fail to post the notice. Additionally, the Board may treat an employer's failure to post the notice as evidence of the employer's unlawful anti-union motive in an unfair labor practice case.

The Board's new posting requirement appears to be in line with the Board's more aggressive rule-making strategy, which is reflective of the current ideology of the Board itself rather than any specific statutory authority or recent change in the law. Due to the lack of express statutory authority for the new posting rule, we anticipate possible legal challenges to the enforceability of the rule and to the Board's rule-making authority in general, especially in light of the escalating tension between the Board and the House Oversight and Government Reform Committee and its chairman, Darrell Issa (R-Calif.).

Employer Options

Prior to the new rule's effective date of November 14, 2011, employers should consider exploring available options for communicating with employees about their rights under the NLRA – such as the right to refrain from union organizing activity – and should seek advice and guidance from their labor law practitioners to ensure that any such communications comply with the law.

For more information, please contact **Gary Ingram** (817.334.7245 or gingram@jw.com), **Scott McLaughlin** (713.752.4301 or smclaughlin@jw.com) or **Sarah Mitchell** (214.953.5870 or smitchell@jw.com).

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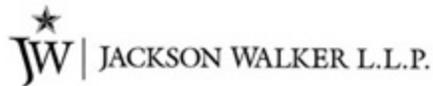
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