

NLRB Required Poster On Employee Rights Is Now Available to Employers

Date: 9/14/2011

On September 14, 2011, the National Labor Relations Board made the newly-required poster describing employee rights under the National Labor Relations Act available for [free download](#). Employers should post the 11-by-17-inch notice where employees see other notifications of workplace rights and employer rules and policies.

On August 25, 2011, over the dissent of Member Brian Hayes, the National Labor Relations Board issued a final rule addressing "Notification of Employee Rights under the National Labor Relations Act." Effective 75 days following the August 26, 2011 scheduled publication in the Federal Register, which would be November 9, or November 14 (per the NLRB's inconsistent press release), every employer covered by the National Labor Relations Act will be required to post the prescribed 11x17 inch notice.

In addition to physical posting at "conspicuous places...readily seen by employees, including all places where notices to employees...are customarily posted," any employer that "customarily communicates" via intranet or internet with its employees as to "personnel rules or policies" must display an exact copy of the Notice on such site(s), or a link to the NLRB's web site which reads, "Employee Rights under the National Labor Relations Act."

The new Rule isn't just about unionizing and organizational rights (although it certainly is designed to promote that outcome). In addition to a rather one-sided statement of protections afforded to employees who are or who may wish to be engaged in organizing activities, the Notice speaks to protected concerted activities, alerting employees to protections they have in voicing complaints about terms and conditions of employment.

Rejecting comments critical of the "one-size fits all" nature of the "Notice To Employees" published along with its "Notice of Proposed Rulemaking," the NLRB refused to amend the Notice to reflect the different rules articulated in federal case law pertinent to different industries. For instance, while recognizing the different restrictions on employee solicitation and distribution permissible in the retail and acute care hospital environments, the "Notice to Employees" recites only the most traditional rules pertinent to working time and work area restrictions.

The Final Rule makes it an independent violation of the Act should an employer fail or refuse to post the Notice (or, presumably, fail to do so appropriately.) Of additional concern, the Final Rule states that an employer's failure to post the Notice will likely serve to extend the six-month limitation period for filing unfair labor practice charges, and may be evidence of anti-union motivation in any NLRB proceeding where motive is an issue.

As dissenting Member Hayes observed, upwards of six million employers in the private sector will be subjected to the posting requirement merely to, "reverse the steady downward trend in union density among private sector employees in the non-agricultural American workforce."

Fisher & Phillips strongly recommends that employers review the [Federal Register website](#) and obtain appropriate legal advice as to compliance with the Rule, and to determine whether you may be subject to exceptions from the one-size fits all approach taken by the NLRB in crafting that document.

This Legal Alert provides information about a specific new federal rule. It is not intended to be, and should not be construed as, legal advice for any particular subject.