



## **NLRB Issues Final Rule Requiring Employers to Notify Employees of Their Rights Under the NLRA**

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**By Amy J. Zdravecky**

In December 2010, Franczek Radelet notified employers that the National Labor Relations Board (NLRB) had announced a proposed rule which would require employers to **post a notice of employee rights under the NLRA**. On August 25, 2011, the Board announced that a **final rule** regarding this posting requirement will go into effect for all employers subject to the Board's jurisdiction on November 14, 2011.

### **Purpose of the Rule**

In the final rule, Chairman Liebman acknowledged that the purpose of the rule is to increase employee awareness of their rights, which in turn will increase union organization, by stating: "Informing employees of their statutory rights is central to advancing the NLRB's promise of full freedom of association, self-organization and designation of representatives of their own choosing." In support of its argument that this rule is needed, the NLRB asserted that because most private employees are unorganized, they do not know their rights under the NLRA.

Member Hayes dissented from the final rule on several grounds. In his view, the Board does not have the authority to promulgate a notice posting rule, the rule is arbitrary and capricious in any event, and the rule is an improper attempt "to reverse the steady downward trend in union density among private sector employees in the non-agricultural American workforce."

### **Content of the Notice**

The Board attached a copy of the required notice to the final rule, which is available **here**. The notice specifically informs employees of their rights, among others:

- (1) to organize a union to negotiate with your employer concerning your wages, hours or working conditions;
- (2) to form, or assist a union;
- (3) to discuss their terms and conditions of employment, or union organizing, with co-workers or union representatives;
- (4) to take action with one or more co-workers to improve their working conditions by raising work-related complaints directly with their employer, a government agency, or a union;
- (5) to strike and picket;
- (6) to bargain collectively over wages, benefits, hours, and other working conditions; and
- (7) to choose not to do any of these activities, including joining or remaining a member of a union.



The notice further informs employees that it is illegal for their employer to question them about their union support, prohibit them from talking about or soliciting for a union or distributing union literature during non-work time, discipline, discharge or threaten them for engaging in concerted activity, prohibit the wearing of union paraphernalia in the workplace absent special circumstances, promise benefits to discourage union support, or videotape peaceful union activities and gatherings.

## **Posting Requirements**

The rule requires all covered employers to post the 11"x17" notice in conspicuous places, including in all places where notices to employees are customarily posted. In addition, employers who customarily post notices to their employees regarding personal rules or policies on an internet or intranet site are required to also post the notice of rights on those sites. The final rule, however, does not require the notices to be posted via email, Twitter or any other electronic means. Notices must be posted in English and in another language if at least 20% of the employees are not proficient in English and speak the other language. The Board will provide translations of the notice in the appropriate language. A federal contractor who already has posted the Department of Labor's notice pursuant to Executive Order 13496 will be considered to have complied with this notice posting requirement and will not be required to post the NLRB's notice.

## **Penalties**

The final rule includes several penalties for non-compliance. Under the rule, the Board may issue unfair labor practice charges against employers who fail or refuse to post the notice. The Board may also toll the statute of limitations for filing an unfair labor practice charge if an employer has failed to post the notice, and it may use such failure as evidence of an unlawful motive in unfair labor practice cases where motive is an issue. The Board, however, will not impose monetary fines for non-compliance.

The Notice of Rights will be provided at no charge by the NLRB Regional offices or can be downloaded from the **NLRB website** as of November 1, 2011 and can be printed in color black and white on one 11" x17" paper or two 8" x11" papers taped together. Franczek Radelet can also obtain copies of this notice for employers after November 1, 2011.

## **More Information**

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