



Inside The Beltway

Keeping You Informed

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Critical developments in labor and employment law

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NLRB Issues FINAL RULE—Effective November 14, 2011, Private Sector Employers **MUST POST NOTICE of EMPLOYEE RIGHTS *to organize a union***

Executive Branch/Administration

National Labor Relations Board—Notice Posting of Employee Rights under NLRA

On December 22, 2010, the National Labor Relations Board (NLRB) issued a proposed rule to require private sector employers subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights under the NLRA. The NLRB released the final rule today to be posted in the Federal Register on August 30, 2011. The rule requires posting in the workplace effective November 14, 2011.

Excerpts of the required Notice read:

- The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain...Employees covered by the NLRA are protected from certain types of employer...misconduct. Under the NLRA, you have the right to organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment; form, join or assist a union; bargain collectively through representatives of employees' own choosing; discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union; and strike and picket...
- Under the NLRA, it is illegal for your employer to prohibit you from talking about or soliciting for a union during non-work time or from distributing union literature during non-work time; in non-work areas; question you about your union support or activities in a manner that discourages you from engaging in that activity; fire, demote, or otherwise take adverse action against you because you join or support a union; threaten to close your workplace if workers choose a union to represent them; promise or grant promotions, pay raises, or other benefits to discourage union support; prohibit you from

wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances; and spy on or videotape peaceful union activities.

The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered). Federal contractors are already subject to a similar notice posting rule required by the U.S. Department of Labor. The NLRB will consider the DOL notice posting as complying with the NLRB notice-posting requirement.

Copies of the required NLRB Notice will be available on or before November 1, 2011, at no cost to the employer upon request and will be downloadable from the NLRB website, www.nlr.gov. Posting of the NLRB Notice should be at the same places as other legally required notices are posted throughout the workplace.

Notice posting will also be required on an employer's intranet or internet site if personnel rules and policies are regularly posted on such sites. Employers are not required to email employees a copy of the Notice. If 20 percent or more of the workforce is not proficient in English, the NLRB will provide translations of the Notice and the Notices will also be available on the NLRB's website.

Failure to post the Notice will constitute an unfair labor practice which may be filed with the NLRB by *any* person. Further, the failure to post the Notice will be deemed evidence of anti-union animus or motivation where employers are alleged to have interfered, restrained, or coerced or otherwise discriminated against employees to encourage or discourage union membership or activity.

Over 7,000 comments were filed by interested parties. Nixon Peabody LLP prepared comments which were filed by the Society of Human Resource Management.

Bottom Line:

In his dissent, NLRB member Hayes strongly objected to the issuance of the rule arguing that the NLRB has no statutory authority to mandate notice posting. Undoubtedly, the rule will be challenged.

In the meantime, anticipate a range of employee reactions to the Notice and prepare your supervisors and managers on an appropriate and lawful response. In workplaces where unionization has never occurred or been discussed, do not ignore the possibility that employees may have questions and that external developments in the community and social media may arise as a result of the attention to the new requirement which may in turn create issues at your worksite. Supervisory and managerial updated training is strongly recommended.

Finally, with the current NLRB chairman's term ending at midnight, August 27, 2011, further developments are expected. Stay tuned....

For further information on the content of this *Alert*, please contact your Nixon Peabody attorney or:

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