



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## NLRB SAYS PRIVATE SECTOR EMPLOYEES MUST BE NOTIFIED OF RIGHTS UNDER NATIONAL LABOR RELATIONS ACT

By Matthew R. Porio and Brian A. Caufield

On August 25, the National Labor Relations Board (NLRB) announced that beginning on November 14, nearly all private sector employers subject to the National Labor Relations Act—even those employers without unionized workforces—must post a notice informing employees of their rights under the Act.

Specifically, the notice informs employees they have the right to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; and to refrain from any of these activities. It also provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

The Board will provide free copies of the notice beginning on or before November 1, 2011. These can be obtained by contacting the NLRB directly at 1.866.667.NLRB or by downloading the notice from the [NLRB web site](#) and printing it on one 11-by-17-inch paper or two 8-by-11-inch papers taped together. The notice must be posted where other workplace notices are typically posted. In addition, an employer that usually posts notices regarding employee policies on a company internet or intranet site must post the notice on those sites as well.

Moreover, when 20 percent or more of a workforce is not proficient in English, the employer must provide a copy of the notice in the language the employees speak. When a workforce consists of two or more groups meeting that specification, the employer must either post

the notice in those languages or post the notice in the language spoken by the largest group of employees and provide copies in the appropriate languages to the others.

Failure to comply with the posting rule is considered an unfair labor practice and will result in an order from the NLRB to cease and desist from failing to post the notice and an order to post the notice. Furthermore, the Board may extend the Act's six-month statute of limitations for filing an unfair labor practice charge involving independent unfair labor practices against the employer due to its failure to post the notice. In addition, the Board may consider a knowing and willful refusal to comply with the posting requirement as evidence of unlawful motive in a case in which motive is an issue.

The notice rule may seem innocuous, but a failure to comply has far-reaching consequences. The most notable is equating a knowing and willful refusal to post as evidence of unlawful motive. This "evidence" has the potential to lead to a finding of unlawful motive, which can significantly affect an employer's defense to an unfair labor practice charge. We urge our clients and non-clients to contact us to ensure compliance with this new rule so that any negative consequences can be avoided.

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