

Employment Law Advisory for 8/31/2011

The NLRB Announces A New Posting Requirement Under The NLRA

Employers are subject to a broad range of posting requirements under a variety of federal and state laws. Required notices cover a broad range of topics such as workplace safety, equal employment opportunity, nondiscrimination and minimum wage requirements, to name a few. The National Labor Relations Board (“NLRB”) has added one more employer notice requirement to the mix. Last week, the NLRB issued a new rule requiring employers to post a written notice informing employees of their right to organize a union, bargain collectively and otherwise act for mutual aid and protection under the National Labor Relations Act (“NLRA”).

The National Labor Relations Act is the federal law that guarantees the rights of employees to organize and bargain collectively with their employers and to engage in other protected concerted activity or to refrain from engaging in any concerted activity. The NLRA provides employees with certain rights and prohibits certain employer and union conduct. The National Labor Relations Board is the federal agency imbued with certain rule-making and adjudicatory powers related to enforcement of the NLRA.

The new rule becomes effective on November 14, 2011, and the NLRB expects employers to comply with the posting requirement as of the effective date. The NLRB has stated that copies of the required notice will be available on the NLRB website (<http://www.nlr.gov>) and from the various NLRB regional offices by November 1, 2011. Translated versions will be available and, according to the NLRB, must be posted at workplaces where at least 20% of the employees are not proficient in English. The NLRB also takes the position that the notice must be posted on the employer’s intranet or internet site if the employer customarily posts personnel rules and policies on those sites.

The proposed rule was issued last December for a public comment period and the NLRB received many comments opposed to the rule from employers and employer organizations. In response to the comments received, the NLRB deleted the original requirement that the notice be emailed to all employees.

The text of the required notice is actually quite lengthy and goes through each of the rights available to employees under the NLRA, including the right to unionize, bargain collectively, discuss wages, benefits and other terms and condition with other co-workers or, to refrain from engaging in any of these activities. The notice also details unlawful employer actions, such as prohibiting employees from talking about or soliciting for a union during non-working hours, questioning employees about their union support in a manner meant to discourage employees from supporting a union, promising benefits in exchange for nonsupport of a union or, retaliating against an employee for supporting a union.

The NLRA applies broadly to employers in the private sector, therefore, this posting requirement will affect most private sector employers. The NLRB takes the position that the notice must be posted in “conspicuous places” where it will be readily seen by employees, including all places where notices to



employees concerning personnel rules or policies are customarily posted. Failure to comply with the posting requirement is considered an unfair labor practice by the NLRB and, if an unfair labor practice charge is filed, the relevant NLRB office will investigate and adjudicate the charge.

While failure to post a required notice is often an innocent employer mistake, lawyers representing employees tend to argue that it reflects unlawful motive and is part of a calculated attempt to deprive employees of legal rights. The addition of the NLRA notice requirement provides a good opportunity for employers to audit all state and federal posting requirements and to make sure required posters are both up to date and displayed in appropriate locations. If you have any questions about the new NLRA notice requirement, or any other issue relating to employment law, please contact one of our attorneys:

Daniel F. Pyne, III	DPyne@hopkinscarley.com
Richard M. Noack	RNoack@hopkinscarley.com
Ernest M. Malaspina	EMalaspina@hopkinscarley.com
Karen Reinhold	KReinhold@hopkinscarley.com
Erik P. Khoobyarian	EKhoobyarian@hopkinscarley.com
Shirley E. Jackson	SJackson@hopkinscarley.com