

## All Employers Must Post Notice of Employee NLRA Rights by November 14, 2011

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As employers' cluttered bulletin boards demonstrate, many federal and state laws require employers to post notices advising employees of various rights. The National Labor Relations Board (NLRB) has now added to that clutter by issuing a [rule](#) requiring virtually all employers (union or non-union) to post a notice informing employees of certain rights under the National Labor Relations Act.

The new required notice will have both a summary of employees' rights under the Act and examples of how employers and unions could violate those rights. It also will describe the obligation to bargain in good faith when a union has been selected by employees and assures employees that illegal conduct by employers will not be permitted. Employees are advised to contact the NLRB with any questions or complaints. While the official notice has not yet been published, a sample of the notice contents can be found [here](#). The rule will become effective on Nov. 14, 2011.

### Employer Obligations

Employers are required to post the notice in conspicuous places, including *all* places where notices to employees are customarily posted, and on the company intranet or internet site if personnel rules and policies are customarily posted there. Following posting, employers are required to take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise rendered unreadable. The failure to post the notice constitutes an unfair labor practice and could extend the time limitation for employees to file unfair labor practice charges. In addition, willful failure to post the notice can be used as evidence of an unlawful motive in a retaliation case.

- Employers may obtain free copies of the notice from the NLRB or print copies of the electronic version from the [NLRB website](#) once the notice is published, as long as the copies are 11" x 17".
- If 20% of the employer's employees are not proficient in English, the employer must also post a notice in each language spoken by 20% or more of the employees. The NLRB will make translations available.
- If an employer customarily posts personnel rules and policies on its intranet or internet, it must also post the NLRB notice electronically "no less prominently than other notices to employees," either by (1) obtaining the notice from the NLRB site and posting it on the employer's website in full or (2) posting a link to the Board's website that contains the full text of the required notice. As with the paper copies, if 20% of the employees are not proficient in English, the employer must post the notice in *each* language spoken by 20% or more of the employees.

### Exceptions/Limitations

- This rule applies only to employers that fall under the jurisdiction of the National Labor Relations Act (NLRA). Public sector employers and some very small employers are not subject to the NLRA.
- If the employer is a federal contractor that already complies with the Department of Labor's similar notice-posting rule, it need not also post the NLRB notice in the same location.
- The NLRB "contemplates that employers will be required to physically post notices on their own premises *and* at worksites where the employer has the ability to post a notice or cause a notice to be posted directed to its own employees." Therefore, where an employer has employees working at a site of another employer, it should determine whether it has the ability to post the notice and whether the other employer has one posted.

### **Recommended Action by Employers**

Although not required by the rule, we recommend that employers keep records of when and where the notices are posted, and assign the responsibility to regularly check whether the notice has been defaced or altered and to replace it if so.

For employers who already have employees represented by unions, the information contained in the notice will not be particularly surprising or interesting. Most of the time, the employer's collective bargaining agreement with the union will govern situations that arise, although the notice might make employees somewhat more likely to pursue NLRB charges rather than grievances. Nevertheless, we recommend that unionized employers provide training to supervisors and managers about the notice so they can be more informed than their employees and be able to respond to employee questions and threats.

The biggest effect will likely be in workplaces without unions. It certainly may encourage some employees to consider union organizing or filing NLRB unfair labor practice charges where they may not have done so before, by making clear to employees that they have such rights even without a union. Thus, we recommend a more comprehensive training for supervisors in these workplaces so that they can avoid creating an environment that encourages unionization, avoid violating the NLRA, and avoid expensive and wasteful charges and legal proceedings.

### **The Rule Is Controversial**

The NLRB reports that it received approximately 7,000 comments regarding this rule, the majority of which "oppose[d] the rule or aspects of it." Many commenters questioned whether the notice rule was actually "necessary to carry out the provisions of the Act" and whether the NLRB had the authority to issue this rule. Further, Board Member Hayes dissented vociferously from the decision to issue the rule, and predicts that a court will overturn it. Although we expect a legal challenge to the rule, employers must be prepared to comply in case the implementation of the rule is not enjoined.

### **What's Next From the NLRB?**

The notice posting rule is the most recent in a line of actions reflecting the intent of the current NLRB to create more union-friendly rules and interpretations and to influence labor relations according to policy objectives of the current Administration. For instance, the NLRB has taken an increasing interest in the labor implications of workplace policies, like social networking and e-mail usage policies. In addition, the NLRB has issued another proposed rule significantly altering the framework for scheduling union elections. Comments on that proposed rule may be submitted until Sept. 6, 2011, at [www.regulations.gov](http://www.regulations.gov). Given the NLRB's resurging impact on both unionized and non-unionized employers, all employers need to pay attention to newly issued decisions and any proposed and final rules. DWT will monitor these developments and provide specific analysis of developments that are of particular significance. We have extensive NLRB and labor law experience to answer questions you may have and to assist you with understanding and complying with any of the NLRB's new rules.

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