



NLRB Requires Notice of NLRA Rights to Employees

Grand Rapids, Michigan

Bridgewater Place
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, MI 49501
Phone: 616/336-6000
Fax: 616/336-7000

Lansing, Michigan

The Victor Center
201 N. Washington Square
Suite 810
Lansing, MI 48933
Phone: 517/482-6237
Fax: 517/482-6937

Kalamazoo, Michigan

251 North Rose Street
4th Floor
Kalamazoo, MI 49007
Phone: 269/382-2300
Fax: 269/382-2382

Grand Haven, Michigan

The Chemical Bank Building
1600 South Beacon
Suite 240
Grand Haven, MI 49417
Phone: 616/846-7100
Fax: 616/846-7101

Novi, Michigan

39500 High Pointe Boulevard
Suite 350
Novi, MI 48375
Phone: 248/567-7400
Fax: 248/567-7440

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Effective November 14, 2011, employers large enough to be subject to the jurisdiction of the National Labor Relations Board will be required by a new Federal Rule to post a Notice to Employees advising them of their rights under the National Labor Relations Act. To determine whether a particular employer is large enough, the law will employ the NLRB's traditional specific industry, total revenue and dollar amount of interstate commerce standards. These standards are broad enough to cover most employers.

The essential requirements for the notice are as follows:

- 1) the Notice itself must be at least 11 inches by 17 inches in size; 2) it must be posted in conspicuous places, including all places where notices to employees concerning personnel rules and policies are customarily posted; 3) where 20% or more of an employer's workforce is not proficient in English and speaks a language other than English, the notice must be posted in the language the employees speak; 4) the employer must take reasonable steps to assure the Notice is not altered, defaced or covered by other material; and 5) the employer must also post the Notice on an intranet or internet site, if the employer customarily communicates with employees about personnel rules and policies by such means.

The Notice itself is nearly identical to the Notice already required be posted by federal contractors. It contains advice with regard to employee rights to form and join unions and engage in protected "concerted" activities, and employer "thou shalt nots," as well as a far shorter list of prohibited union conduct. There is only one reference in the Notice to an employee's

right to "Choose not to do any of these activities, including joining or remaining a member of a union."

The consequences of a failure to post the Notice as and where required are:

- 1) the failure itself will be deemed an unfair labor practice, i.e., unlawful interference with employee rights; 2) an employer that fails to post the Notice may lose its ability to rely on the 6-month statute of limitations for employee filing of unfair labor practice charges; and 3) the failure to post the Notice may be used as evidence of the employer's unlawful motive in any proceeding where the employer's motive is in issue.

Recommended Steps:

- 1) determine, if necessary, whether your business meets the NLRB's jurisdictional standards; 2) assuming it does, determine the location or locations at which the Notice will need to be posted; 3) obtain, either from the NLRB, its website or your customary federal workplace notice provider the requisite number of copies; 4) assure posting by November 14 in a manner designed to prevent alteration or defacement of the Notice.

As an employer, you also have the right to communicate with your employees, more fully explaining to your employees both their rights to refrain from union membership and activity, as well as your own opposition to their representation by a union. We strongly recommend that any such communication, its substance and the form it takes, be reviewed in advance by competent labor counsel.