

Labor & Employment Client Service Group

To: Our Clients and Friends

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NLRB Final Rule On Employee Rights Notice Posting

Beginning in November, 2011, the vast majority of U.S. private-sector employers will have to add yet another notice to the patchwork of government posters already hanging on their workplace bulletin boards, announcing to employees their rights under federal law. On August 25th, the National Labor Relations Board (“NLRB” or “Board”) issued a final rule requiring all employers subject to the Board’s jurisdiction^{1/} to post a Board-published notice of rights under the National Labor Relations Act (“NLRA”). In addition to posting the 11x17-inch physical notice in “all places where notices to employees concerning personnel rules or policies are customarily posted,” the rule requires a covered employer to post the notice on its internet or intranet site if the employer customarily posts its personnel rules and policies there. Alternatively, an employer can provide a link, titled “Employee Rights under the National Labor Relations Act,” on its internet or intranet site, leading to the Board’s website where the notice is located.

Notably, unlike many federal employment laws, the NLRA contains no mention of a posting requirement of the sort now required by the Board’s new rule. In light of the absence of express statutory authority for the rule, legal challenges to its enforceability are expected. Indeed, in a blistering dissent, Board Member Brian Hayes predicted that a reviewing court would soon “save the Board from itself” and charged that the Board had acted in excess of its authority and in a manner that is clearly designed to “reverse the steady downward trend in union density among private sector employees.”

While the Board acknowledges that it lacks authority to levy fines against an employer that fails to comply with the new posting rule, it has warned that the failure to post the required notice will be treated as an independent violation of the NLRA. Furthermore, the Board has indicated that non-compliance with the posting rule will likely result in the Board choosing to extend the six-month

^{1/} Employers subject to the Board’s jurisdiction include private-sector employers located in the fifty states which comprise the United States and the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, Saipan and Guam.

statute of limitations for filing a charge involving other unfair labor practice allegations against the employer. Finally, the Board has indicated that the failure to post the notice may be considered evidence of an employer's unlawful anti-union motive in an unfair labor practice case involving other alleged violations of the NLRA.

The Board's new rule takes effect on November 14, 2011. Leading up to that date, employers should consult counsel to plan for compliance and to determine what additional measures should be taken to protect their interests in light of the new rule.

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For additional information on this topic, please contact a member of Bryan Cave LLP's [Labor and Employment Client Service Group](#).