

WSGR ALERT

OCTOBER 2011

NLRB DELAYS DATE FOR COMPLIANCE WITH UNION-RIGHTS POSTING REQUIREMENT

On October 5, 2011, the National Labor Relations Board (NLRB) announced that it was postponing the effective date of its new rule requiring employers to post a notice regarding employees' union rights from November 14, 2011, to January 31, 2012. The new rule, found at 29 C.F.R. § 104.202, requires all employers covered by the National Labor Relations Act (NLRA) to post a notice informing employees of their rights to, among other things, form a union, join a union, assist a union, or refrain from doing any of these things. Under the rule, covered employers must post the notice in a conspicuous spot and make it available on the company's intranet. Failure to comply with the rule may result in an unfair-labor-practice charge against the employer. More information on the details of the new posting requirement can be found in a recent WSGR Alert.¹

The new rule has been highly controversial since the NLRB first proposed it in December 2010. Indeed, the comment period on the proposed rule was extended in light of the intense interest it generated, much of it negative. This scrutiny has only increased since the NLRB formally enacted the rule and set an initial deadline of November 14, 2011, for compliance.

In announcing the delay, the NLRB noted that the postponement was necessary "in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium size businesses." The

NLRB also stated that the decision was made after the organization received "queries from business and trade organizations indicating uncertainty about which businesses fall under the [NLRB's] jurisdiction" and that it was "made in the interest of ensuring broad voluntary compliance."²

In addition to the confusion regarding which employers are covered by the new rule, the NLRB's decision to postpone the rule's effective date almost certainly was influenced by recent litigation filed by a variety of trade organizations. Several suits, including a suit brought by the National Federation of Independent Business and the National Association of Manufacturers, have been filed challenging the NLRB's authority to enact the new rule.

In sum, while the NLRB has indicated that it will not make any changes to the rule or the required notice, the NLRB's most recent move has created uncertainty regarding the date by which employers will have to comply. Unless a court prevents the new rule from taking effect in the interim, however, it appears that employers should anticipate complying with the rule by January 31, 2012.

For more information on the NLRB's original decision or its recent decision to postpone the compliance deadline, please contact a member of the firm's employment law practice.



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650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 Fax: (650) 493-6811
email: wsgr_resource@wsgr.com

www.wsgr.com

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¹ Read the full WSGR Alert at <http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert-right-to-unionize.htm>.

² A full copy of the NLRB's press release announcing the delay can be found at <http://nlrb.gov/news/posting-employee-rights-notice-now-required-jan-31-board-postpones-deadline-allow-further-educ>.