

Employment Law Update - September 2011

August 29, 2011

NLRB REQUIRES EMPLOYERS TO POST PRO-UNION NOTICE

On August 25, 2011, the National Labor Relations Board (NLRB) issued regulations requiring virtually all employers to post a large notice to employees informing them of rights under the National Labor Relations Act (NLRA), particularly their right to unionize. Employers must post the notice beginning November 14, 2011.

CONTENT OF THE POSTER

The text of the poster is essentially the same as that recently imposed upon federal contractors through Executive Order 13496. The text does not expressly quote employees' four statutory rights under NLRA Section 7. Rather, the poster paraphrases and amplifies all but one of those rights. Most of the poster emphasizes unionization rights. Only a couple of lines, however, reference an employee's right to "refrain" from – to say "no" or to not participate in – the other three Section 7 rights. Nor does the poster inform employees about other important union-related rights, such as an employee's Beck rights (an employee covered by a union security clause may refuse to pay union dues and fees for anything other than collective bargaining) or an employee's right not to pay union dues at all in right-to-work states like North or South Carolina. The complete regulations and language contained in the poster can be found at: http://www.ofr.gov/OFRUpload/OFRData/2011-21724_PI.pdf

POSTING

All NLRA-covered employers (with certain narrow exceptions) must conspicuously display the 11-by 17-inch poster in the workplace "where notices are customarily posted." Where an employer customarily uses an intranet or internet site to communicate personnel rules or policies, the employer must also electronically post the notice or the NLRB's link to the notice. If a workforce is comprised of significant numbers of employees who are not proficient in English, the employer must display a poster or posters using their applicable languages. The NLRA covers most private sector employers, but not federal, state, or local government; certain agricultural operations; or railroads or airlines that are subject to the Railway Labor Act.

PENALTIES

Failure to display the poster in the workplace could trigger significant legal problems for an employer. These include:

- An unfair labor practice charge;
- Evidence of an employer's "unlawful motive," an important factor in establishing other unfair labor practice charges; and

- Extra time (beyond the normal six-month period) to file other unfair labor practice charges against the employer.

EMPLOYER RESPONSIBILITIES AND OPTIONS

Covered employers must display the poster beginning November 14, 2011.

At the same time, a union-free employer could consider posting its own explanation about its policies and employees' related rights and opportunities. An employer might also post other relevant government posters nearby, such as (if applicable) the state's Right to Work poster. Additionally, employers might use the opportunity to meet with their employees and discuss the NLRB's poster, the advantages of remaining union-free and the employees' right to say "no" to unions or unionization.

The proposed poster raises important labor relations concerns and opportunities. Employers should consult with labor counsel regarding their related options and responsibilities.