

Labor & Employment Client Service Group

To: Our Clients and Friends

October 6, 2011

NLRB Postpones Effective Date of “Employee Rights” Posting Requirement

The National Labor Relations Board (“Board”) announced on October 5, 2011, its decision to postpone until January 31, 2012 the effective date of its recently published rule requiring employers to post notices informing employees of their rights under the National Labor Relations Act (“NLRA”). As emphasized in a previous [Client Alert](#), the Board finalized its new notice-posting requirement in August and, at that time, announced that the rule would take effect on November 14, 2011. Since the final rule’s publication, however, at least three federal lawsuits (two in the District of Columbia and one in South Carolina) have been filed challenging the rule, and—as the Board acknowledged yesterday—the rule has prompted many questions and much uncertainty from employers across the nation. Citing the Board’s “interest of ensuring broad voluntary compliance” with the posting rule, the agency decided unanimously to push back the rule’s effective date to January 31, 2012. In doing so, the Board declared that the postponed effective date would “allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses.” Notably, however, the Board emphasized that “[n]o other changes in the rule, or in the form or content of the notice, will be made.”

Among the aspects of the rule that the Board has declared will not change are the following requirements:

- All employers subject to the Board’s jurisdiction^{1/} must post an 11x17-inch Board-published notice of rights under the NLRA in “all places where notices to employees concerning personnel rules or policies are customarily posted.”
- Any covered employer that customarily posts its personnel rules and policies on its internet or intranet site(s) must post the NLRA notice there, as well, or such an employer must provide a link,

^{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.

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.

- Where 20 percent or more of an employer's workforce is not proficient in English, and speaks a language other than English, the employer must post the notice in the language the employees speak. If an employer's workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must either physically post the notice in each of those languages or, at the employer's option, post the notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the notice in the appropriate language. (If an employer requests from the Board a notice in a language in which it is not available, the requesting employer will not be liable for non-compliance with the rule until the notice becomes available in that language.)
- An employer must take reasonable steps to ensure that the notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable.

Non-compliance with the posting rule (if and when it takes effect) may carry stiff consequences. While the Board lacks authority to levy fines against an employer that fails to comply with the new rule, it has warned that the failure to post the required notice will be treated as an independent violation of the NLRA and that non-compliance with the rule may result in an extension of the NLRA's six-month 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 motivation in an unfair labor practice case involving other alleged violations of the NLRA.

In anticipation of the Board's posting rule's new effective 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.

* * *

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