



NEW RULE REQUIRES EMPLOYERS TO POST NOTICE OF EMPLOYEES' RIGHTS TO UNIONIZE

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The National Labor Relations Board (NLRB) adopted a new rule which requires most private employers to post a notice of employee rights under the National Labor Relations Act (NLRA) effective November 14, 2011. The notice is meant to inform employees that they have the right to organize and join unions, bargain collectively, assist a union and to engage in other protected activity or refrain from participating in such activity. In addition, the notice provides contact information for the NLRB and lists a litany of unlawful employer conduct.

The new rule requires that all employers covered by the NLRA conspicuously post the notice where other employment notices are customarily posted and to take "reasonable steps" to ensure that the notice is not altered, defaced, or covered by any other material or otherwise rendered unreadable. In addition, employers also must post the notice on an internet or intranet site if the employer customarily posts personnel rules and policies on the site.

The new rule specifically addresses the issue of multi-national workforces in the United States, and provides that where 20% or more of a workforce "is not proficient in English and speaks a language other than English" the employer must provide notice in the language that such employees speak. In addition, if an employer's workforce "includes two or more groups constituting at least 20% of the workforce who speak different languages, the employer must provide the notice in each such language." The NLRB has offered to provide translations of the notice.

The new rule does not apply to state or political subdivisions, agricultural, railroad and airline employers. In addition, small employers that don't meet the annual volume business thresholds required for the jurisdiction of the NLRB will be exempt from the new rule. For retail employers, the threshold is a gross annual volume of business thresholds of \$500,000 or more. For non-retail employers, the NLRB will generally have jurisdiction if the employer's annual inflow or outflow to other states is at least \$50,000.

Failure to post the notice may be an unfair labor practice under the NLRA. If an employer knowingly and willfully fails to post the notice, the failure also may be

considered evidence of unlawful motive in any unfair labor practice case involving other alleged violations of the NLRA. In addition, if the notice has not been posted, the NLRB may extend the six-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer.

Copies of the notice will be available for employers to download from the NLRB website at www.NLRB.gov beginning November 1, 2011. Employers can also satisfy the rule by purchasing and posting a set of workplace posters from a commercial supplier.

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