

NLRB Issues Controversial Employee Notification Rule

August 26, 2011 by [Adam Santucci](#)

On August 25, 2011, the [National Labor Relations Board \("NLRB"\) announced the issuance of a "Final Rule"](#) that will require employers to notify employees of their rights under the National Labor Relations Act ("NLRA"). The Final Rule will take effect on November 14, 2011.

Which employers are affected by the Final Rule? The [Final Rule \(PDF\)](#) applies to any employer that is covered by the NLRA. This includes most employers in the private sector; however, certain employers with an annual business volume of less than \$500,000 may be excluded. Small businesses should consult with counsel to determine whether they fall under the NLRB's jurisdiction. Federal contractors who already post a similar notice under [Executive Order 13496](#) are deemed to comply with the Final Rule if they comply with notice posting regulations under the Executive Order.

What are the notification requirements? Covered employers must post the required notice "in conspicuous places" where it is "readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted." The required notice informs employees of their rights under the NLRA. These include the rights to organize a union, bargain collectively, discuss wages with co-workers and to engage in a strike and other "protected concerted activity." The notice also provides information as to how employees may contact the NLRB for more information regarding their rights.

The required poster will be made available on the [NLRB website](#). Employers may post the official color poster that appears on the [NLRB website](#), or a black and white photocopy of it; however, all posted notices must be at least 11" by 17" and the same font as the official notice. In workplaces where 20% or more of the workforce is not proficient in English, special rules apply regarding posting the notice in other languages. Electronic posting on a company's intranet or Internet site is also required "if the employer customarily communicates with its employees about personnel rules or policies by such means."

What happens if an employer fails to comply? Employees may report employer non-compliance to the NLRB and failure to post the notice may result in the filing of an unfair labor practice charge ("ULP") with the Board. The Final Rule provides detailed instructions to employees on the process for filing a ULP charge. If an employer refuses to comply after receiving notice of non-compliance, the Regional Director for the NLRB may issue a formal complaint and schedule a hearing before a federal administrative law judge who may then issue an order requiring posting. A willful refusal to post the

notice may be deemed by the NLRB as evidence of "unlawful motive" in cases where an employee alleges other violations of the NLRA (e.g. discrimination on the basis of union activity). In addition, in such cases where an employer fails to post the notice, the Board may excuse employees from the six-month statute of limitations for filing ULP charges based on other alleged unlawful conduct by the employer.

Why is the Final Rule controversial? The Final Rule is particularly controversial because the threat of union organizing is a hot button issue for many employers and the Final Rule is widely viewed as a political payback to unions by the current Administration. The sole Republican appointee on the Board dissented to the issuance of the Final Rule. Although employers are already required to post notices under several other federal employment laws (e.g. Title VII), those laws typically contain specific notice provisions – the NLRA does not. This is the first posting requirement of general applicability issued by the NLRB since the NLRA was passed in 1935. It remains to be seen whether business groups or political opponents of the Final Rule will take legal or political action to block enforcement.

If you have any questions regarding the [Final Rule](#), you may contact any member of [McNees Wallace & Nurick's Labor and Employment Law Group](#) by [clicking here](#).

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