



## Are You Ready For The New NLRB Employee-Rights Notice Requirement Concerning Unionization?

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On August 25, 2011, the National Labor Relations Board (NLRB) announced that a final rule, which would require all employers subject to the Board's jurisdiction (which includes most employers except for extremely small employers who do not engage in interstate commerce) to post an [11 x 17-inch notice of employee rights under the National Labor Relations Act \(NLRA\)](#), will go into effect 75 days following the publication of the rule in the Federal Register (most likely November 14th).

Physical posting of the Notice will be required at "conspicuous places...readily seen by employees, including all places where notices to employees...are customarily posted." Additionally, any employer that "customarily communicates" via intranet or Internet with its employees as to "personnel rules or policies" must display an exact copy of the Notice on such site(s), or a link to the NLRB's website which reads, "Employee Rights Under the National Labor Relations Act." The final rule, however, does not require the Notice to be posted via email. The Notice must be posted in English and in another language if at least 20% of the employees are not proficient in English and speak the other language. The NLRB will provide translations of the Notice in the appropriate language. The Notice will be provided at no charge by the NLRB Regional offices or can be downloaded from the NLRB website as of November 1, 2011.

In addition to what is an apparent one-sided series of statements of protections afforded to employees who are or who may wish to be engaged in union organizing activities, the Notice also sets forth the right to engage in "protected concerted activities," alerting employees to protections they have in making and voicing complaints about terms and conditions of employment.

The Notice as set forth in the final rule specifically informs employees of their rights, including the right:

- (1) to organize a union to negotiate with your employer concerning your wages, hours or working conditions;
- (2) to form or assist a union;
- (3) to discuss their terms and conditions of employment, or union organizing, with co-workers or union representatives;
- (4) to take action with one or more co-workers to improve their working conditions by raising work-related complaints directly with their employer, a government agency or a union;

- (5) to strike and picket;
- (6) to bargain collectively over wages, benefits, hours and other working conditions; and
- (7) to choose not to do any of these activities, including joining or remaining a member of a union.

The final rule includes several consequences for non-compliance. Under the rule, the Board may issue unfair labor practice charges against employers who fail or refuse to post the notice. The final rule makes it an independent violation of the NLRA should an employer fail or refuse to post the Notice (or, arguably not to do so properly.) Of additional concern, the final rule states that an employer's failure to post the Notice will likely serve to toll the six-month statute of limitations period for filing unfair labor practice charges, and may be evidence of anti-union motivation in any NLRB proceeding. The Board, however, apparently at this point will not impose monetary fines for non-compliance.

If this final rule goes into effect as planned, this can become a serious situation for employers, since unionization could very likely be encouraged. But unionization is not the only action which could be encouraged. The whole concept of "concerted activity" could lead to other actions of employees voicing complaints as to any aspect of, or policies related to, your operation, which could be construed as a "term or condition of employment."

This final rule on the Notice requirement appears to be just another effort by the current composition of the Board for rule making, which makes it easier for employers to be unionized. Another such rule is on the horizon. Currently in the comment stage is a proposed NLRB rule which would place NLRB union elections on a fast track, giving employers less time to respond to ongoing union efforts once the election petition is filed.



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