

All Employers May be Required to Post NLRB Notice of Union Organizing Rights

December 29, 2010

[Mark A. Carter](#), [Adam L. Maynard](#)

The National Labor Relations Board ("NLRB") has issued a Notice of Proposed Rulemaking that would require all Employers subject to the National Labor Relations Act to post "Notices" physically and electronically.

In a proposed rule issued on December 22, 2010, the NLRB requires all Employers to post 11 by 17 inch Notices and e-mail employees (where the Employer customarily communicates with employees by such means) a Notice identifying the statutory rights of employees to organize unions. The NLRB intends to punish all Employers who fail to make the required postings through their unfair labor practice process.

The Notices explain the statutory protections under the National Labor Relations Act for employees who desire to form unions. The Notices will not only inform employees of their rights, wrote the NLRB, but will also dissuade Employers from violating those rights.

Employers subject to the National Labor Relations Act are the vast majority of private sector Employers. Examples of Employers outside of this class are federal, state, county and municipal employees, common carrier employees (such as railway and airline workers) and certain agricultural employees. Virtually all other employees, and Employers, are within the jurisdiction of the NLRB regardless of whether or not the employees have previously determined to unionize.

The proposed rule would necessarily alter the NLRB's statute of limitations and fact-finding process. The NLRB expressly anticipates bringing claims against non-complying Employers after the statutory 6 month statute of limitations tolls where the charging party (typically an employee) has no previous understanding of the statutory limitation on actions. Moreover, the NLRB anticipates that the failure of an Employer to post the Notices as required will presumptively establish "anti-union" animus, or motive, making it easier to bring claims against that Employer on other matters.

The sole Republican on the NLRB, Brian Hayes, dissented from the Order. Member Hayes wrote "... the Board lacks the statutory authority to promulgate or enforce the type of rule which the petitions contemplated and which the proposed rule makes explicit."

The NLRB will entertain public comment on the proposed rule for a 60 day period, after which it will begin enforcing the rule or make revisions for further comments. There is also a remote possibility it will decide not to enact the rule.

In addition to participating in the public comment forum, Dinsmore and Shohl will closely monitor this process and report to our clients regarding any further developments.