

NLRB issues final rule requiring employers to post notice of employees' rights

On August 25, 2011, the National Labor Relations Board (the "Board") issued a final rule (the "Final Rule"), which requires employers to inform employees of their rights under the National Labor Relations Act (the "Act"). This Final Rule was designed to close a so-called "knowledge gap" in the workforce. The Final Rule contains minor changes from the Board's Proposed Rule on this topic.

Click here to view our previous Alert regarding the Proposed Rule, "Ready or not, here they come - NLRB issues new Proposed Rule to revamp the union election process." The Final Rule is expected to take effect on November 14, 2011.

Who must post?

The Final Rule applies to the majority of employers covered by the Act, regardless of whether the employer has any union employees. Employers with gross volumes of business over \$500,000 and employers with \$50,000 or more in annual gross revenues from interstate sales or purchases of goods are required to post the notice. As the Board noted previously, the Final Rule is designed to capture the "great majority" of small businesses in the United States.

What must be posted?

Employers covered by the Final Rule are required to post notice of employees' rights under the Act. The notice must contain a detailed listing of employees' rights under the Act, not a mere recitation of employees' rights under Section 7 of the Act. In response to a comment from one employer, the Board specifically noted that employers are free to post their own notice emphasizing an employee's right to refrain from concerted activity, if desired.

Form and location of posting

The Final Rule sets forth specific size requirements for the notice. It shall be at least one 11 inch by 17 inch poster or two 8 ½ inch by 11 inch posters taped together. The poster may be in color or in black and white. The Board will provide a free copy of the poster for employers on or before November 1, 2011. Employers may also purchase a copy of the poster through a commercial source.

The notice must be posted in English. If, however, more than 20% of an employer's employees are not proficient in English, the employer must provide the posting in the language spoken by employees. If more than one group of 20% of employees is not proficient in English, then the employer is required to provide notice in each group's language. The Board will also provide translated copies of the notice and of the required link to the Board's website in appropriate languages.

Notice must be posted conspicuously, including in all places where notices to employees are customarily placed. Employers must post this notice alongside FMLA or other similar state and federal law notices, in places like breakrooms or on bulletin boards. Moreover, if an employer customarily posts policies on an internet or intranet site, then the employer must also provide an electronic notice in those places. Employers are not, however, required to distribute the posting via email, Twitter or other electronic means.

Enforcement and potential sanctions for failure to post

The Board will treat a failure to post as an unfair labor practice charge under the Act. In most cases where an employer fails to post, the Board will inform the employer of the need to post the notice and the employer will comply, ending the unfair labor practice case. The Board may also extend the 6-month statute of limitations for filing unfair labor practices against employers who fail to post the notices. Further, if an employer willfully fails to post the notice,



the failure may be considered evidence of unlawful motive in unfair labor practice cases. The Board will not, however, issue fines for failure to post the notice.

Conclusion

Employers must post the required notices no later than November 14, 2011, or be willing to accept the sanctions provided in the Final Rule. If you would like to discuss the impact of the Final Rule on your business, whether to post an additional notice regarding employees' right to refrain from unionization, how unionization may impact your business, and/or how to take steps to avoid possible unionization, please contact:

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