

National Labor Relations Board Requires Employers To Post Notices Of Employee Rights

Completing a rulemaking process that began late last year, the National Labor Relations Board is expected to publish a rule on August 30, 2011 requiring *most* employers, not just unionized ones, to post a notice to employees detailing their right to organize under the National Labor Relations Act. **This final rule will require that notices be posted within 75 days which will be on or around November 13, 2011.** The notice requirement has been strongly pushed by labor unions, along with other pending NLRB rules, and has been roundly criticized by employers as unnecessary.

The final rule contains 175 pages of explanation from the NLRB. Those lengthy comments attempt to explain the reasons for the rule and for the many features within it that employers find objectionable. One feature that employers have found particularly troublesome requires that the notice contain a detailed explanation of what constitutes an employer unfair labor practice in various situations. While there is also a requirement that the notice contain information about union unfair labor practices, the description of what constitutes a union unfair labor practice is far less elaborate.

Because of this stark contrast, many employers believe this notice is not a neutral statement of employee rights, but rather a NLRB-approved document designed to encourage employee efforts to unionize. Employers believe this is inconsistent with the NLRA in view of the statute's premise that employees ought to be equally free to organize or **not to** organize.

Unfortunately, regardless of what employers may want, all employers subject to the jurisdiction of the NLRB will be required to post the notice. The general jurisdictional standard for any non-retail employer is an annual direct or indirect inflow or outflow of goods or services across state lines of \$50,000 or more. For retail entities, the figure is \$500,000. While there are other special jurisdictional rules for architects, colleges and universities, communications, hotels, law firms, restaurants, social service agencies, office buildings and shopping centers, among many others, the bottom line is that the vast majority of non-governmental employers will be required to post this new notice.

If covered by the rule, employers must post the notice in "conspicuous places where they are readily seen by employees." The notice itself is appended to the rule at pp. 185-190, and can be downloaded from the Labor Board's website at www.nlr.gov. The notice must be at least 11 by 17 inches in size. If 20% or more of the workforce speaks a language other than English, employers must post the notice in the language of any such group or groups. Significantly, if employers use an intranet or internet site to customarily communicate with employees about personnel policies and rules, then the notice must be posted electronically and given the same prominence as other employee notices. Alternatively, a link to the NLRB website can be utilized, but most employers, we suggest, will not want to adopt that option.

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The new rule makes it an independent unfair labor practice to fail to post the notice. A failure to post the notice also can lead to an unlimited extension of the NLRA six-month statute of limitations for the filing of unfair labor practices, and it may be used to infer unlawful motive by the employer in cases where motive is an element of an alleged unfair labor practice. Any such failure may become particularly acute in the context of a union organizing drive. As organizing drives are often concealed from the employer, prudence dictates that employers act promptly to come into compliance with the new rule.

The rule may be subject to legal challenges which will delay its implementation. We will keep you posted on any such developments. This is just one of several union-friendly rules pending at the NLRB and at the U.S. Department of Labor which we expect to be adopted in the near future. We will advise you when these kinds of rules become effective. In the meantime, should you have questions about this posting rule or other Labor Board issues, please contact Brian Bulger, Joe Tilson or any other MBT labor & employment lawyer.

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