
Controversial New Rule Requires Employers to Post Notice of Employees' Rights Under the National Labor Relations Act

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On August 25, 2011, the National Labor Relations Board (the "Board") issued its Final Rule requiring all employers covered by the National Labor Relations Act (the "NLRA") to notify employees of their rights under the NLRA. This Rule, which applies to most private sector employers, both unionized and non-unionized, is scheduled to take effect November 14, 2011. The regulation mandates that employers conspicuously post a notice where other employment notices are customarily posted (as well as on a company intranet or Internet site if the employer customarily communicates personnel rules or policies there). The required notice must be posted in English and in another language if at least 20% of employees are not proficient in English and speak the other language. The notice informs employees of their rights to form or join a union and to bargain collectively with their employer for improved wages and working conditions, provides a list of employer prohibited conduct under the NLRA, and supplies contact information for the Board. The notice poster is available through the [Board's website](#).

Several lawsuits and legislative bills seeking to reverse the notice requirement have been filed since the Board issued the regulation. The National Association of Manufacturers, the National Federation of

Independent Business, and, most recently, the U.S. Chamber of Commerce all have filed lawsuits to block the Rule from taking effect. These lawsuits argue both that the Board does not have the authority to force employers to post a notice, and that the Board-designed notice unfairly promotes unionization. Additionally, two bills have recently been introduced in Congress that would reverse the Board's Rule. Unless a court issues injunctive relief, however, the Final Rule will take effect November 14, 2011.

Some employers who object to the notice requirement have questioned whether they should post the notice, as an employer's failure to post the notice will not directly subject an employer to a fine or other penalty. Moreover, the Board will not audit workplaces or initiate enforcement actions on its own, although employees, unions, or other persons may notify the Board of an employer's failure to post the required notice by way of an unfair labor practice charge. Typically, the direct remedy for violating this Rule would be a Board order to post the notice. However, a violation of the Rule could have collateral consequences, such as extension of the statute of limitations for filing other unfair labor practice charges or, if the Board finds that an employer knowingly and willfully failed to post the notice, considering such failure as evidence of unlawful motive in other unfair labor practice cases.

With the effective date for the posting approaching, employers need to understand and consider the implications of posting the notice and ensure that their managers and supervisors are trained in lawfully communicating with and responding to questions from employees about unions and collective bargaining. Employers should also ensure that they understand the potential consequences of not posting and be diligent in monitoring circumstances that could lead to other unfair labor practice charges.

We will be monitoring the legal developments (both litigation and legislative) which could alter the notice posting requirement.

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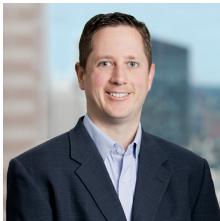
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