

August 30, 2011

New Workplace Posting: NLRA Rights

Effective November 14, 2011, both unionized and non-unionized private-sector employers subject to the National Labor Relations Act will be required to notify employees of their rights under the Act by posting a notice. The National Labor Relations Board believes that many employees protected by the Act are unaware of their rights and a posting will increase their awareness.

The notice contains a list of specific rights employees have under the Act. For example, the notice informs employees of their right to organize and bargain collectively with their employers about wages, hours, and other terms and conditions of employment. The notice informs employees that they may take action with one or more coworkers to improve their working conditions by raising work-related complaints and seeking help from a union. The notice also notifies employees that they may choose not to join or remain a member of a union. The notice then goes on to list specific illegal actions by an employer. Employees are notified, for example, that an employer may not: prohibit soliciting for a union during non-work time; question employees about union support or activities; take adverse action in retaliation for union support; promise perquisites and benefits to discourage or encourage union support; or spy on or videotape peaceful union activities.

Employers must physically post the notice in conspicuous places where it may readily be seen by employees, including all

places where notices concerning personnel rules or policies are customarily posted. Employers also must post the notice on intranet or Internet sites if they typically communicate with employees about personnel rules and policies by such means. Satisfactory electronic posting involves prominently displaying either an exact copy of the notice or a link to the Board's website that contains the poster which is labeled "Employee Rights under the National Labor Relations Act." Employers are **not** required to distribute the posting by electronic mail or other electronic means. Employers must take reasonable steps to ensure that the notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable.

While the Board does not have the authority to levy fines for a failure to post the notice, it may view a failure to post as an unfair labor practice. The Board expects, however, that a failure to post will often be unintentional and an employer will comply when requested by the Board. If the employer complies with the request, the unfair labor practice case typically will be closed without further action by the Board. However, the Board may decide to extend the six-month statute of limitations for filing a charge concerning other unfair labor practice allegations against the employer. Additionally, if an employer knowingly and willfully fails to post the notice, such failure may be used by the Board as evidence of an employer's unlawful motive in other pending unfair labor practice cases.

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Employers may obtain copies of the notice through various means. They may purchase the notice through a commercial supplier or request copies, free of charge, from Board headquarters or regional offices beginning on or before November 1, 2011. In addition, employers will be able to download the notice from the Board's website, and print it out in color or black-and-white on one 11-by-17 inch sheet of paper or two 8-by-11 inch sheets of paper which can then be taped together.

Translated versions of the notice will be available and must be posted (in addition to the English version) at workplaces where at least 20% of employees are not proficient in English. If two or more languages are spoken by groupings constituting at least 20% of the workforce, the employer must either physically post the notice in each of the applicable languages or, at the employer's option, post the notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the notice in their respective language.

If the Board does not have a translated version that an employer seeks, the employer will not be liable for non-compliance. Translated versions of the notice must be posted in all locations where the English version of the notice is posted.

If you have any questions about this advisory, or for more information about the new posting requirement, please contact Farah Mollo at (212) 785-7600.

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