



## National Labor Relations Board Issues Final Rule Requiring Private Sector Employers to Post Notices of Employee Rights

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On August 25, 2011, the National Labor Relations Board ("NLRB" or "Board") issued its final rule requiring private sector employers subject to the National Labor Relations Act ("NLRA" or "Act") to post notices informing employees of their rights under the NLRA. The NLRB's asserted authority to issue such a rule has already been challenged by proposed legislation introduced by Rep. Benjamin Quayle (R-AZ) on September 2 seeking the rule's repeal. In the meantime, the rule, which was approved by a 3 to 1 vote of Board members, is scheduled to take effect on November 14, 2011. As of that date, all covered private sector employers must post legally-required notices throughout the workplace in a "conspicuous place" *as well as* on the employer's intranet or internet site if personnel rules and policies are regularly posted on such sites.

**The Required Notice.** The required notice informs employees of specific rights afforded them under the NLRA, such as the right to: (1) organize a union for the purpose of negotiating terms and conditions of employment (such as wages and hours) with their employer; (2) form, join or assist a union; (3) engage in collective bargaining through chosen representatives for a contract with their employer setting specified working conditions (such as wages, hours and benefits); (4) discuss terms and conditions of employment with co-workers and/or a union; (5) take action with one or more co-workers to improve terms and conditions of employment by, among other things, seeking assistance from a union; (6) strike and/or picket; and (7) choose *not* to engage in any of these activities. In addition, the notice advises employees of actions employers are *prohibited* from taking under the NLRA, such as, among other things, prohibiting employees from talking about or soliciting for a union during non-work time and/or taking adverse action against employees for joining or supporting a union or engaging in concerted activity. Additionally, the notice provides employees with information for reporting violations, including the NLRB's website and contact information.

The required notices will be made available to employers on or about November 1, 2011 through the United States Department of Labor's ("DOL") regional offices and [website](#). Translated versions will also be made available by the DOL and must be posted at covered private sector employer workplaces where at least 20% of employees are not proficient in English. Employers are also required to take reasonable steps to ensure that the "notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable."

**Which Employers Are Required to Post?** The NLRB's notice posting requirement applies *only* to private sector employees covered by the NLRA. In other words, public sector employers are *not* bound by the rule. While the NLRA covers most private-sector employers, excluded from coverage are agricultural, railroad and airline employers as well as certain small employers that do not meet specified gross annual volume of business requirements. Additionally, federal contractors who already post the notice required under Executive Order 13496 will be considered to be in compliance with the new rule.

**Consequences of Employer's Failure to Post.** There are no record-keeping or reporting requirements and the NLRB cannot impose fines for a private sector employer's failure to post the required notice. Nonetheless, a failure to post may be treated as an unfair labor practice under the NLRA that may be reported to the Board by employees. If, after an investigation into such a charge, the NLRB finds that the employer failed to post the notice as required, the employer will be ordered to do so. Additionally, where an employer's failure to post is found to be knowing and/or willful, the posting failure may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA.

**The Impact on Private Sector Employers.** Whether and to what degree the requirements of the new rule will impact a private sector employer will vary. At a minimum, it is likely that the posting requirement will cause employees to question the reason for the notice. More significantly, employers with non-unionized workforces may experience an increase in employee discussion of and/or interest in unionization. Thus, in addition to ensuring compliance with the physical and electronic posting requirements by November 14, 2011, employers should consider the specific factual circumstances and makeup of their individual workforces as they prepare to comply with the rule and anticipate employee response. Proactive steps may range from providing supervisors and managers with specified training on how to address and/or respond to employee reaction to considering, creating and implementing effective union avoidance strategies with the assistance of legal counsel.

We will send out an e-blast if the rule is repealed prior to November 14, 2011. Employers who have questions in the meantime are encouraged to contact Jennifer Parda at 425-450-0495.

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