



ATTORNEYS AT LAW

## **NLRB ISSUES FINAL RULE REQUIRING EMPLOYERS TO POST NOTICES OF EMPLOYEES' COLLECTIVE BARGAINING RIGHTS**

On August 25, 2011, the National Labor Relations Board (“NLRB”) issued its final rule on “Notification of Employee Rights” which requires most all private employers to post conspicuous notices to their employees of the right to organize and collectively bargain, lists a litany of unlawful employer conduct as well as provide contact information for the NLRB. The rule will take effect November 14, 2011 and will likely have a significant impact on union-free employers.

### **Questions and Answers:**

#### **Does the notice requirement apply to my company?**

The new rule likely applies to your business. The rule is not limited to those workplaces with recognized union representation. Most all private-sector employers are sufficiently engaged in interstate commerce to fall within the jurisdiction of the NLRB and this new rule, with the exception of agricultural, railroad and airline employers who are not covered by the National Labor Relations Act (“NLRA”).

#### **Is there a requirement about what the text of the notice must say?**

Yes. The text of the notice is posted at the end of this bulletin, and is very similar to the current notice required of federal contractors under a Department of Labor rule. The NLRB is expected to provide a sample notice employers can use (including copies in foreign languages) by November 1, 2011. The NLRB will be available to download from the NLRB’s website ([www.nlr.gov](http://www.nlr.gov)) or in the local NLRB office.

#### **Is there a requirement about the size of the notice?**

Yes. The posted notice must be 11 inches by 17 inches.

### **Where should I post the notice?**

Employers must post and maintain the notice in a conspicuous place, where notices to employees are customarily posted. Employers must take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise unreadable.

### **Does the company have to post the notice online?**

If the company customarily posts personnel rules and policies on its internet or intranet sites, it must also post the notice there as well. The link to the notice must read, “Employee Rights under the National Labor Relations Act.” Note that employers are not required to distribute the notices by email.

### **Does the notice have to be posted in other languages?**

All employers must post the notice in English. If 20% or more of employees are not proficient in English and speak another language, the employer must also post the notice in that language. If the workforce includes two (2) or more groups constituting at least 20% of the workforce who speak different languages, the employer must either: (1) post the notice in each of those languages or, (2) 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 the appropriate language.

### **Does the company have to submit records or reports of the notice to the NLRB?**

No, the rule does not require a company to submit records or reports of the notice to the NLRB.

### **What happens if I do not post the notice?**

Failure to post the notice may be treated as an unfair labor practice under the NLRA. If an employer does not post the notice, the NLRB can extend the six (6) month statute of limitations for filing a charge for an unfair labor practice. Failure to post the notice may also be used as evidence of an unlawful motive in an unfair labor practice case involving other violations of the NLRA.

### **Next Steps for Employers**

Employers should prepare for the November 14, 2011 implementation date. The notices may well prompt employee questions. Employers should take steps to train supervisors regarding the meaning of the notice, the company's position on unionization, and how to lawfully communicate with employees on this subject. Companies may also want to consider the pros/cons of posting their own notices regarding unionization.

Please contact Ross Hamilton [(336) 271-5279], Denis Jacobson [(336) 271-5242], Nathan Duggins [(336) 271-5246], Jeff Southerland [(336) 271-5251], Martha Sacrinty [(336) 271-5217], or Brandy Mills [(336) 271-5212] of the Labor and Employment practice group if you have any questions concerning your compliance with the rule.

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## EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or refrain from engaging in any of the above activity. Employees covered by the NLRA\* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about the specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, ours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.

- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>. You can also contact the NLRB by calling toll-free: 1-866-667-NLRB

(6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired. If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

\*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

This is an official Government Notice and must not be defaced by anyone.