

National Labor Relations Board Proposes Regulation Requiring Employers to Post Notices About Employees' Rights under the National Labor Relations Act

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The National Labor Relations Board (NLRB) has issued a proposed regulation that, if finalized, would require virtually all private employers in the United States to post notices about workers' rights under the National Labor Relations Act. Employers would be required to notify employees of their right to unionize, to bargain collectively and to strike or picket. Further, the proposed notice states that employers cannot prohibit employees from soliciting co-workers to join a union and cannot take any adverse action against an employee for engaging in union activities or other protected, concerted activity. The proposed notice also includes information regarding how an employee can report unlawful conduct.

Under the proposed regulation, employers would be required to post these notices "in conspicuous places," including all places where notices to employees are customarily posted. In addition, employers would be required to distribute the notice electronically, such as by email or posting on an intranet, if the employer customarily communicates with its employees by such means.

The proposed regulation also addresses an employer's failure to post the required notice. Under the proposed rule, if the Board finds that an employer has failed to post the required notices, the employer will be ordered to cease and desist from the unlawful conduct and post the required employee notice along with a remedial notice. Further, the proposed regulation states that an employer's failure to post a notice would toll the statute of limitation for filing a charge of unfair labor practices. Finally, the proposed regulation contemplates that the failure to post a notice may be used as evidence of union animus by the employer in cases in which the employer's motive is at issue.

The Board is accepting public comments on the proposed regulation for the next 60 days. While it is likely that the regulation in some form will be implemented, the Board may alter the proposed rule based upon the public comments it receives. We will update you when the regulation is finalized.

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