

National Labor Relations Board Issues Final Rule Requiring Employers to Post Notices About Employees' Rights under the National Labor Relations Act

Written by Kristyn Bunce DeFilipp

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The National Labor Relations Board has issued a final rule which requires virtually all private employers in the United States to post notices about workers' rights under the National Labor Relations Act ("NLRA"). The new rule is derived from an earlier proposed rule that was published on December 22, 2010. The rule is scheduled to be published in the Federal Register on August 30, 2011 as 29 C.F.R. §§ 104.201 et. seq., and will take effect 75 days later, on November 14, 2011.

Under the new final rule, all private sector employers that are subject to the NLRA are required to notify employees of their right to unionize, to bargain collectively and to strike or picket. The rule also applies to federal contractors, which can comply with the rule by posting the notice of employee rights that is already required by the Department of Labor. The required 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 notice also includes information regarding how an employee can report unlawful conduct.

Employers will be required to post these notices "in conspicuous places," including all places where notices to employees are customarily posted. In addition, employers must post the notice electronically, on an intranet or internet site, if the employer customarily communicates with its employees by such means.

The new regulation also addresses an employer's failure to post the required notice. If the Board finds that an employer has failed to post the required notices, the employer may be charged with an unfair labor practice under Section 8(a)(1) of the NLRA for interfering with, restraining, or coercing employees in the exercise of their rights. Further, an employer's failure to post a notice may toll the statute of limitation for filing a charge of unfair labor practices, unless the employee has received actual or constructive notice that the conduct complained of is unlawful. Finally, 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.

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