

## Employers Required to Post Notice Concerning Employee Rights to Unionize

On August 30, 2011, the National Labor Relations Board (NLRB) published a new rule requiring that employers post a notice to employees informing them of their rights under the National Labor Relations Act (NLRA), including rights to act together to improve wages and working conditions, to form and join a union, and to bargain collectively. The rule takes effect on **November 14, 2011**.

The required form of notice begins with the following preamble:

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 activity or to 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, using the contact information supplied below, if you have any questions about the specific rights that may apply in your particular workplace.

The NLRB states that copies of the complete notice will be available by November 1, 2011. Employers can request copies of the notice from the NLRB or download them from the NLRB's website. Downloaded copies must be

printed (in color or black-and-white) on 11x17-inch paper (or two 8-by-11-inch papers taped together). Employers also can use a commercial poster service as long as the notice maintains the same size, color and content. (Many employers use such commercial posting services to meet their posting requirements under the various federal and state employment-related laws.)

The notice must be posted in conspicuous places, including all places where notices to employees are customarily posted (e.g., the employee break room). Significantly, employers who maintain internet or intranet sites where they customarily post or communicate personnel rules or policies to employees must post the notice electronically as well. Employers can either post the actual notice or provide a link to the notice on the NLRB's website. Employers are not required to distribute the posting by email, Twitter or other electronic means.

Where 20 percent or more of an employer's workforce is not proficient in English and speaks a language other than English, the employer must provide notice in the language the employees speak. If an employer's workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must provide the notice in each such language. The NLRB states that it will translate the notice to employees who "do not understand or speak English well."

There is no fine for failing to post the required notice, as the NLRB does not have authority to impose fines. However, the NLRB may treat the failure

to post the notice as an unfair labor practice under the NLRA. The NLRB also may extend the six-month statute of limitations for filing a charge involving other unfair labor practices. Further, if an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA.

The impact of this notice posting requirement will vary from employer to employer. For most employers the impact will not go beyond whatever cost or inconvenience they experience in meeting the posting requirements. For other employers, however, the required posting may cause some employees to discuss and explore unionization. Accordingly, employers should evaluate the potential consequences of the posting and consider whether any vulnerability to unionization should be addressed, and whether front-line supervisors are equipped to respond to employees inquiries.

The Morse, Barnes-Brown & Pendleton, PC, **Employment & Immigration Practice Group** provides sophisticated legal services and practical advice to employers of all sizes, ranging from technology start-ups to Fortune 1000 companies.

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