

National Labor Relations Board Issues Final Rule Requiring Employers to Notify Employees of NLRA Rights¹

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The National Labor Relations Board (NLRB) has issued a Final Rule requiring most private-sector employers to notify employees of their rights under the National Labor Relations Act (NLRA). The rule was to take effect on November 14, 2011, but the NLRB recently postponed the effective date to January 31, 2012, to allow for further education and outreach.

Who is covered by the rule?

The rule applies to all employers, unionized or not, that are subject to the NLRA. The NLRA covers most private employers, including non-profits, except those whose impact on interstate commerce is deemed to be “slight” as determined by their annual volume of business. The threshold for coverage depends on the industry (for example, \$500,000 for retailers, restaurants and hotels; \$250,000 for healthcare facilities, day care centers and law firms; \$1 million for colleges, private schools, and libraries).

What does the rule require?

The rule mandates that covered employers notify employees of their rights under the NLRA by posting an 11 x 17 inch notice in “conspicuous places where they are readily seen by employees.” The employer must take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise rendered unreadable. In addition to physical posting, employers must also post the required notice on an intranet or internet site if personnel policies and rules are customarily posted there. The employer can either post the actual notice or provide a link to the notice on the NLRB’s website. If twenty percent (20%) or more of an employer’s workforce speaks a language other than English, the employer must post the notice in the language that the employees speak. Employers can meet this obligation by providing the notice to the individual employees or posting the notice in the required languages. Employers can obtain translated notices from the NLRB and can request that the NLRB translate the notice into languages not already available. There is no requirement that employers distribute the notice via e-mail or other electronic means.

How do employers obtain the notice?

Employers can request copies of the notice from the NLRB or download them from the NLRB’s website at: <http://www.nlr.gov/poster> Downloaded copies must be printed on

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11x17-inch paper but can be printed in black and white. Employers can use a commercial poster service as long as the notice maintains the same size, content, format and size and style of type.

What happens if an employer ignores the posting requirement?

An employer who fails to post the notice can be subject to an unfair labor practice charge at the NLRB. In most cases, the charge will be closed if the employer was unaware of the requirement and complies promptly. Failure to post the notice may also result in a tolling (delay) of the six-month statute of limitations for the filing of unfair labor practice charges. If an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in a separate unfair labor practice case involving the same employer.

What are the implications of the rule?

The notice provides employees with detailed information about their rights under the NLRA, including their right form a union, to discuss wages and other terms and conditions of employment with co-workers and to engage in other “concerted activity for mutual aid and protection.” The notice also informs employees that, under the NLRA, it is illegal for their employer to interfere with such activities. It is anticipated that, as a result of the notices, employees will be more likely to assert their NLRA rights – indeed, that is one of the primary purposes of the notice requirement.

Another purpose of the notice requirement is to educate employers, particularly non-union employers. Many employers do not realize, for example, that it is unlawful to implement a policy that prohibits non-supervisory staff from discussing their wages. They may not be aware that an employee who complains about working conditions, on behalf of others, cannot be disciplined for doing so, even if the employee does so using arguably unprofessional language. They may be unaware that listening in on employee discussions about union organizing can result in an unfair labor practice charge for spying. These are only a few examples of situations where an uneducated employer can find itself on the receiving end of an unfair labor practice charge. Now, more than ever, employers need to educate themselves and their supervisory staff about conduct that may violate the NLRA.

What steps can employers take now?

1. Obtain a copy of the notice from the NLRB website.
2. Post the notice in a conspicuous location, where other workplace notices are posted.
3. Post the notice on the company intranet or internet site, if personnel policies and rules are customarily posted there.
4. Translate the notice, if necessary.
5. Read the notice carefully, and make sure you understand its provisions.
6. Arrange for labor counsel to conduct manager training on NLRA do’s and don’ts, and strategies for maintaining a positive, respectful workplace where morale is high, employees have a voice, and employees do not feel the need to turn to a union or the NLRB to be treated in a fair and legally compliant manner.