

NLRB REQUIRES EMPLOYERS TO POST NOTICE OF RIGHT TO ORGANIZE

Labor & Employment Alert
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On August 25, 2011, the National Labor Relations Board (NLRB) announced that it will require employers to post notices informing employees of their rights under the National Labor Relations Act (NLRA) for the first time in the act's 76-year history. The new requirement will apply to virtually all private sector employers, regardless of whether their workforces are unionized or they are federal contractors.

Contents of the Required Notice

The required notice will inform employees that they have a federal right to:

- Join, assist, or organize a union to negotiate with their employer concerning wages, hours, and other terms and conditions of employment
- Bargain collectively through representatives of their own choosing
- Discuss wages and benefits, terms and conditions of employment, or union organizing with co-workers or a union
- Take action with one or more co-workers to improve working conditions
- Strike and picket
- Choose not to join or remain a member of a union

The required notice will also inform employees that employers are prohibited from taking the following actions:

- Prohibiting employees from talking about or soliciting for a union during non-work time, or distributing union literature during non-work time, in non-work areas
- Questioning employees about union support or activities in a manner that discourages employees from engaging in that activity
- Firing, demoting, transferring, reducing hours, changing shifts, or otherwise taking or threatening adverse action against employees because employees join or support a union, engage in concerted activity for mutual aid and protection, or choose not to engage in any such activity
- Threatening to close a workplace if workers choose to have a union represent them

Attorneys

Ryan Everhart
Andrew Freedman
Peter Godfrey
Karl Kristoff
Elizabeth McPhail
Jeffrey Swiatek

Practices & Industries

Labor & Employment

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- Promising or granting promotions, pay raises, or other benefits to discourage or encourage union support
- Prohibiting employees from wearing union hats, buttons, t-shirts, and pins in the workplace, except under special circumstances
- Spying on or videotaping peaceful union activities and gatherings or pretending to do so

The required notice will also explain, generally, the concept of collective bargaining, such as the requirement to bargain in good faith.

The Timelines and Posting Requirements

Employers must post the required notice beginning November 14, 2011. On September 14, 2011, the NLRB published the notice employers' must use. Translated versions will be available and must be posted at workplaces where at least 20 percent of employees are not proficient in English. Employers must also post the notice on their intranet or an internet site if personnel rules and policies are customarily posted there.

Violations

Failure to post the notice may be treated as an unfair labor practice under the NLRA and may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA. Furthermore, where an employee alleges other unfair labor practices, the effect of failing to post the required notice may toll the six-month statute of limitations that ordinarily applies to charges of NLRA violations.

Implications

The new posting requirements are designed to encourage employees to discuss and explore unionization. Consequently, non-unionized employers should proactively consider conducting supervisor training regarding union avoidance and undertaking a strategic analysis of the workplace to identify potential vulnerabilities in this area.