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NLRB Requiring Posting of Employees' Rights

Questions?

If you have any questions about this alert, please contact:



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The National Labor Relations Board has adopted a new rule that will require virtually all private sector employers, whether their employees are represented by a union or not, to post an 11" x 17" poster explaining the rights employees have under the National Labor Relations Act. The prescribed text will be available on the NLRB website in advance of November 14, 2011, when the requirement goes into effect.

In addition to posting in a conspicuous location with other personnel rules and policy notices, the notice must also be available on a company's internet or intranet to the same extent and same manner as it maintains its personnel rules and policy notices to employees. Employers that communicate with employees by e-mail must also send them the notice, or a link to the NLRB's website with an introduction about the notice. The posting must be made available in other languages if 20% of the work force is not proficient in English. The NLRB will have translations available in its website.

The notice lists the rights of employees to organize a union; to bargain collectively; to discuss wages, benefits and other terms of employment with co-workers; to take collective action with other employees about work-related complaints; to strike or picket; and to choose not to engage in any of these activities. There is a list of employer actions that are prohibited under law, and illegal actions by unions. There is also a description of where and when employees may solicit their co-workers in support of a union. Employees are provided with the NLRB's contact information in case they have questions or want to file a complaint.

The NLRB's position is that the failure to post the notice will constitute an unfair labor practice. For the first offense, the NLRB will generally seek voluntary compliance. If there is compliance, that should end the matter in most cases. However, if there are other unfair labor practice violations, the failure to post the notice may extend the time period when an employee can file an unfair labor practice. While this is not automatic, and may depend on what the employee knows about the NLRA, it could extend the limitation period from 6 months to 12 months. Additionally, the NLRB may try to prove that the failure to post was intentional and therefore an indication of an anti-union animus, which could impact the investigation and prosecution of other unfair labor practice charges.



The NLRB's decision to adopt the new rule was not unanimous; a dissenting member questioned both the Board's authority to impose a posting requirement, and the justification for doing so. Congress may also consider some action that would nullify the rule, in responses to pressure from the business community. Meanwhile, however, we recommend that the notice be posted, and that the subject matter be reviewed with supervisors so that they have an understanding of the scope of the law, the rights of employees, and the restrictions on supervisory actions. If outside assistance is needed, several members of the Employer Defense and Labor Relations practice group at Shipman & Goodwin LLP have experience in training supervisors on these issues. To view a complete list of our practice group members, visit http://www.shipmangoodwin.com/labor_employment/.

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