

Private Employers Now Required to Inform Employees of Their Right to Unionize or Face Possible Unfair Labor Charge

Beginning November 14, most private sector, non-unionized employers will be required to display a notice that describes employee rights under the National Labor Relations Act ("NLRA"), including the right to organize. The notice, which must be printed on 11 x 17 paper, was made available last week and can be downloaded [here](#). Employers who post personnel rules or policies on an intranet site must provide a link to the poster as well.

While the NLRB does not audit workplaces or initiate enforcement actions, failure to comply with the posting requirement could result in an unfair labor practice charge brought by an employee, union or other person. According to the NLRB, the Board will assume that employers who fail to post the notice failed to comply because they were unaware of the rule and will comply upon the Board's request. The NLRB does not have the authority to fine employers but may extend the six-month statute of limitations for filing an unfair labor practice charge.

Already the notice requirement is meeting with resistance. The National Association of Manufacturers commenced an action in federal court challenging the National Labor Relations Board's authority to promulgate the posting requirement, including subjecting employers to an unfair labor charge and tolling the statute of limitations. The U.S. Chamber of Commerce has brought a similar action.

The posting states, among other things, that under the NLRA employees have the right to:

- Organize;
- Form or join a union;
- Bargain collectively;
- Discuss wages, benefits and other terms and conditions of employment with co-workers;
- Strike and picket;
- Do none of the above.

The notice further provides that employers cannot:

- Prohibit employees from talking about a union during non-working hours;
- Question an employee about union activities;
- Take adverse actions against employees (i.e., fire, demote or transfer) because of their union activities;
- Threaten to shut down the workplace if employees unionize;

- Offer incentives to dissuade employees from unionizing; or
- Prohibit employees from wearing certain union paraphernalia.

At the same time, unions may not coerce employees to join a union or take adverse actions against employees based on the employee's stance on the union.

The notice should be posted in a "conspicuous" place where other workplace rights notices and company notices concerning personnel rules and policies are posted. In addition, the National Labor Relations Board ("NLRB") advises that employers should post the notice at remote worksites as well as primary offices. Employers who send employees to work at premises controlled by others are not required to post there, or at worksites outside the United States and its territories.

If at least 20 percent of the workforce speaks another language and is not proficient in English, the poster must be displayed in that other language. The NLRB will provide the translated notices. If a translation in a particular language is not available from the NLRB, the employer will not be liable for non-compliance.

The NLRB initially proposed posting of NLRA rights in a federal rulemaking procedure in December 2010. After receiving more than 7,000 comments, the final rule was posted in the Federal Register on August 30, 2011, effective 75 days later.

All employers subject to the NLRA are required to post. The NLRA covers most private sector employers, but excludes or exempts from the posting requirement, among others: agricultural, railroad, airline, and postal service employers; independent contractors; and certain small businesses that do not meet the minimum financial requirements.

Posting of employee rights under the NLRA is one of many posting requirements employers are obligated to comply with under state and federal laws. Other posting requirements include notices concerning wage and hour law, Family Medical Leave Act, discrimination, retaliation and military leave. For a complete list of required postings, please contact [Moses & Singer LLP employment attorneys](#).

If you have questions regarding this Alert, please contact the author, **Kimberly Klein** at 212.554.7853/kklein@mosessinger.com.

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