

NLRB Issues Decisions Requiring Electronic Posting of Notices and Interest on Back Pay Compounded Daily

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The National Labor Relations Board (NLRB) issued two employee-friendly decisions within the past week requiring notice postings to be distributed to employees electronically and changing the manner in which back pay is calculated.

In *J & R Flooring*, 356 NLRB No. 9, (October 22, 2010), the Board adopted a new requirement that "respondents in Board cases be required to distribute remedial notices electronically when that is a customary means of communicating with employees or members." Finding that the "paper notices and wall mounted bulletin boards [have] gone the way of the telephone message pad and interoffice envelope," the Board held that where an employer (or union) customarily communicates with employees through email or internal intranet sites, the notices required by the Board must be distributed through the "customary" electronic format.

The ruling amends the Board's current notice posting language to add the following:

In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet site, or other electronic means, if the Respondent customarily communicates with its employees [members] by such means.

The new notice will not require electronic posting in every case, but whether an employer "customarily" communicates through electronic means with employees will be determined during compliance proceedings when the parties will be able to provide evidence as to whether they customarily communicate with employees electronically. The decision is to be retroactively applied to all pending Board cases.

In *Kentucky River Medical Center*, 356 NLRB No. 8 (Supplemental Decision, October 22, 2010), the Board held that interest on back pay where the employer is found to have violated the National Labor Relations Act (NLRA) is to be compounded on a daily basis, instead of the simple interest that the Board had previously required.

The Board looked at the historical purpose of the Act, finding that the Board has updated its rationale and practice of awarding back pay throughout the years. The Board held that the compounded interest "better effectuates the remedial policies of the NLRA" than the previous policy of ordering only simple interest; compound interest is the norm with private lending practices, and awarding compound interest is in line with the Federal Back Pay Act. This decision is to be retroactively applied to all pending Board cases, as well.

These cases suggest that the newly-constituted Board, with a majority of Democratic appointees, may aggressively work to modify existing Board rules.