

More Posters On the Wall: NLRB Issues Final Rule Requiring Most Private Employers to Post NLRA Rights Notice by November

August 30, 2011

For more than 75 years, the National Labor Relations Board (NLRB) never required employers to post a notice of employee rights under the National Labor Relations Act (NLRA). That history changed on August 25 when the NLRB issued a new 45-page rule requiring employers to post an 11" x 17" notice. The new rule published today poses new issues for both unionized and non-unionized employers and becomes effective in 75 days (November 14, 2011). Thus, most private businesses must post the 11" x 17" notice of employee rights by mid-November.

In addition to unionized employers, this rule reaches most non-unionized employers. Rare exceptions include employers in the agricultural, railroad and airline industries (which the NLRA does not cover), the postal service, government employers, and certain small businesses over which the NLRB does not exercise jurisdiction. Independent contractors are also excluded.

A complete, printable notice will be available on the NLRB's website. Free copies will also be available from the NLRB's regional and sub-regional offices. Employers generally must post the notice:

- in conspicuous places (including all places where notices to employees concerning personnel rules or policies are customarily posted);
- on the Internet and intranet if the employer customarily posts personnel policies or rules in that manner;
- in the format and size (at least 11" x 17") that the rule prescribes; and
- in English and all other languages spoken by at least 20% of employees (if those employees are not proficient in English) – although the rule offers some other options on this point.

In response to extensive comments, the Board withdrew a proposed requirement of providing notice by email. It also provided a safe-harbor for companies that request notices in other languages from the Board, which the Board does not yet have available.

Employers should be aware that the NLRB considers failure to post the notice to be an unfair labor practice. According to the NLRB, failing to post the notice interferes with employees' rights to engage in concerted activity under sections 7 and 8(a)(1) of the Act. 29 U.S.C. §§ 157-158. The NLRB says that it expects most failures to post to be due to employers' lack of knowledge of the rule, and charges will usually be closed upon compliance. Any failure to meet the posting requirements may nevertheless result in the NLRB extending the 6-month statute of limitations for an employee to file other kinds of ULP charges, unless the employee otherwise knew about his or her rights. The NLRB's new rule will surely be subject to some challenges. One dissenting Board member believed the rule to be outside the NLRB's power under Section 6 of the NLRA to make any rules that are "necessary" to carry out the Act. 29 U.S.C. § 156.

Miller Canfield will keep you abreast of additional developments.

For more information, contact your Miller Canfield Employment + Labor attorney.

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