

Client Alert **Employment & Labor**

Labor Board Issues New Rule Requiring Employers to Post Notices Concerning Their Employees' Collective Bargaining Rights

For the first time in its 76 year history, the National Labor Relations Board is requiring most private sector employers to post notices informing employees of their collective bargaining rights under the National Labor Relations Act ("the Act"). Along with several other recent controversial actions taken and decisions issued by the NLRB and its General Counsel, all of which have been vigorously opposed by the business community, the notice rule, which becomes effective November 14, 2011, may increase a company's vulnerability to union organizational activities.

Among other requirements:

- The notice must include a list of rights the Act affords employees, which include, but are not limited to, the right to: (1) organize, form, join or assist a union; (2) bargain collectively through representatives chosen by the employees; (3) discuss wages, benefits, and other terms and conditions of their employment with co-workers; and (4) strike and picket, depending on the purpose and means of the strike and picket.
- The notice must also list certain types of actions that employers are prohibited from taking, which include, but are not limited to: (1) questioning employees about their union support or activities in a manner that discourages the

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employees from engaging in that activity; (2) firing, demoting, transferring, taking adverse action, or threatening to do so, against employees because of their union activities; (3) prohibiting employees from soliciting for, or talking about a union during non-work time; and (4) promising to grant promotions, pay raises, or other benefits to discourage or encourage union support.

- The notices must advise employees that if they believe their rights or the rights of others have been violated, they should contact the NLRB at a toll-free number listed on the notice.
- The notices must be posted in conspicuous places, including locations where notices to employees concerning other federal employment laws are usually posted, or where employers typically post personnel rules or policies.
- Employers that customarily post notices to employees concerning personnel rules and policies on an Internet or Intranet site will, in addition, be required to post the NLRB's notice on those sites.
- If at least 20 percent of an employer's workforce is not proficient in English, the employer must post the notice in the other language(s).
- In addition to posting the notices, employers will be responsible for ensuring that the notices are not defaced or otherwise altered.

The NLRB will not fine employers for failing to post the notices. However, an employer's knowing and willful failure to post the notice may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the Act. The NLRB may also, in its discretion, extend the six-month statute of limitations for the filing of an unfair labor practice charge in cases where employers fail to post the required notices.

The NLRB will provide copies of the required notice at no cost beginning on November 1, 2011, and the notice is currently available at www.nlr.gov/poster. Employers that choose to download the notice from the NLRB's website are required to print it on 11x17-inch paper, or on two 8 ½ x11 sheets.

A civil action against the NLRB was recently filed in federal court by a manufacturing group, contesting the new posting rule based on the argument that the NLRB has no

authority under the Act to adopt such a requirement. Additional lawsuits challenging the rule are likely to follow. Unless a court enjoins implementation of the rule, however, employers will be expected to comply with the posting requirement on November 14, 2011.

For additional information concerning employer obligations under the new posting rule, please feel free to contact the following attorneys from our Employment and Labor Practice Group.

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