



# Private Sector Employers Now Required to Post Employees' Union Rights at the Workplace

## Client Advisories

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As a result of a Final Rule issued by the Federal Government, most private employers will be required by November 14, 2011, to place a poster at the workplace that notifies employees of their rights to form a union, and other collective bargaining rights provided to them by law. This rule applies to all employers subject to the National Labor Relations Act (NLRA) even if the employer has no union employees at the workplace.

### Basic Requirements

This New Rule was issued by a federal agency, the National Labor Relations Board ("the Board"). The Board is the agency assigned to interpret and implement the NLRA. Some of the key rights guaranteed to employees under the NLRA include the right to act collectively, the right to discuss the terms and conditions of their employment with each other or with a union, and the right to form a union for purposes of collective bargaining. So, the NLRA historically is a law that provides protection to both union and non-union employees.

Under the New Rule, employers subject to the NLRA are required to post a notice issued by the Board that provides a basic summary of the rights guaranteed to all employees under the NLRA. The notice will also include the Board's contact information and information about filing a charge with the Board against an employer. The notice must be posted in a conspicuous place, including all places where notices to employees are customarily posted. Also, employers are required to make sure that the notices are not altered, defaced, or covered.

Only very small revenue businesses are excluded from the NLRA. The New Rule, however, does not apply to public sector employers, such as the federal government, any wholly owned government corporation, Federal Reserve Banks, or any state or political subdivision thereof, and it also does not apply to any person subject to the Railway Labor Act.

### Posting Specifics

The required notice is not yet available but is expected to be available by November 1, 2011. The form notice will be printed by the Board and may be obtained from the Board's office, 1099 14th Street, NW, Washington, DC 20570, or from any of the Board's regional offices. Copies of the poster in English and other languages may also be downloaded from the Board's Web site at <http://www.nlrb.gov>. Significantly, if the notice is downloaded, the form must be printed in color and on paper measuring 11 inches by 17 inches.

In addition, where 20% or more of an employer's workforce is not proficient in English, employers must post notices in the languages spoken by those employees. The Board will make posters available containing the necessary translations.

Lastly, employers who regularly communicate with their employees about personnel rules or policies electronically are not exempt from the posting requirements. In fact, such "tech-savvy" employers face an additional burden, as those employers are required to post the physical notice AND to distribute the notice electronically. To satisfy this requirement, the notice may be distributed via email or by posting it on an intranet or internet site.

### **Noncompliance**

The proposed sanctions for noncompliance with the posting requirements include:

- Finding the employer's failure to post to be an unfair labor practice;
- Tolling the 6-month statute of limitations for filing an unfair labor practice charge against an employer; and
- Considering an employer's knowing noncompliance as evidence of unlawful motive in other unfair labor practice cases.

### **Anti-Retaliation**

The proposed rule also contains an anti-retaliation provision. Thus, employers may not retaliate against an employee for filing a charge or testifying in a Board proceeding in connection with an employer's failure to comply with the requirements of the rule.

Employers should begin posting the notice on or before November 14, 2011. But, employers should diary their calendars to check the Board's website or regional offices to obtain a copy of the form notice, which as explained above, is not expected to be available to employers until November 1, 2011.

If you have questions or concerns related to the new NLRB regulations or other labor and employment matter, please contact a member of Archer's Labor and Employment Department in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300 or in Hackensack, N.J., at (201) 342-6000.

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