

ALERT

## Another Employer Obligation NLRB Issues New Regulations Requiring Employers to Post Notice of Employee Rights To Unionize

By Bennett Pine

**O**n August 25, 2011, the National Labor Relations Board issued new regulations requiring private-sector employers to post a notice advising employees of their rights to unionize under the National Labor Relations Act. The NLRB's rationale is that a) too many employees were unaware of their right to form or join a union and b) the National Labor Relations Act has been the only major federal workplace law without a notice of rights posting requirement.

**When.** The new regulations take place 75 days after publication in the Federal Register, or November 14, 2011.

**Who's Covered.** The regulations apply to all private-sector employers who fall within the jurisdiction of the NLRB. Essentially, this means all private sector employers, other than agricultural, airline and railroad employers, engaged in more than the minimum level of interstate commerce, with a gross volume of business from retail operations in excess of \$500,000. For non-retail businesses, the standard requires \$50,000 of direct or indirect inflow or outflow of goods or services across state lines.

**"But We Don't Have A Union."** Both unionized and non-unionized employers are covered by the new regulations.

**Federal Contractors Covered.** Federal contractors who already are required by the U.S. Department of Labor to post a similar notice of employee rights will be considered as complying with the new regulations if they post the DOL notice.

**Contents of Notice.** The actual notice will be available free of charge on or before November 1. The notice also may be downloaded from the NLRB website.

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The notice states that employees have the right to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; and to refrain from any of these activities. It provides examples of unlawful employer and union conduct and instructs employees on how to contact the NLRB with questions or complaints.

**How Communicated.** The 11-inch by 17-inch notice must be posted in all locations where the employer usually posts other workplace notices (e.g., minimum wage, overtime, anti-discrimination, family leave rights, etc.). In addition, employers are required to post the notice on an Internet or Intranet site if the employer's personnel rules and policies are customarily posted there.

**What Language.** The language must be posted in English and in another language if at least 20% of the employees are not proficient in English and speak the other language. The NLRB will provide translations of the notice and an appropriate link to their website.

**Penalties for Non-Compliance.** Failure to post the required notice may be treated as an unfair labor practice under the National Labor Relations Act; a process initiated by a "charging party" rather than the NLRB itself.

The remedy for employer non-compliance would typically be a compliance order, rather than a fine or penalty. However, if an employer knowingly and willfully fails to post the notice, that may be considered evidence of unlawful, anti-union motive in an unfair labor practice case involving other violations.

**Recordkeeping Required.** At present, there are no recordkeeping or report requirements. Nevertheless, we suggest that employers do keep a record, log or even digital photo of its notice posting.

**How Did This Happen?** The NLRB states that more than 7,000 comments — mostly opposing — were received after it had previously posted a notice of the proposed regulation in the Federal Register. The NLRB-imposed regulations follow the Obama Administration's unsuccessful effort at passage of the Employee Free Choice Act.

We will continue to monitor developments, including the NLRB's publication of the actual or suggested notice. ▲

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