

LABOR & EMPLOYMENT

NEW NLRB RULE REQUIRES PRIVATE SECTOR EMPLOYERS TO POST NOTICES

by James B. Perry
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For the first time since its establishment in 1935, the National Labor Relations Board (NLRB) has issued a Rule requiring employers covered by the National Labor Relations Act (NLRA) to notify employees of their rights under the NLRA. On August 30, 2011 the NLRB published its new Rule requiring all private sector employers to post an 11" x 17" Notice in "conspicuous places on its premises," where such Notices are customarily posted. This Rule takes effect on November 14, 2011 and covers both non-union and unionized employers, other than governmental employers, and specifically exempted railroad, airline and agricultural employers.

The Notice is titled, "Employee Rights Under The National Labor Relations Act" and specifically states that employees have the right to:

- Organize a Union
- Form, Join or Assist a Union
- Discuss Their Wages And Benefits With Co-Workers
- Bargain Collectively
- Raise Work Related Complaints
- Strike And Picket
- Choose Not to do Any of These Things

The Notice also gives examples of illegal conduct by employers such as taking adverse action against employees for engaging in Union activities or questioning employees about their Union support or activity. Finally the Notice provides employees with information about how to contact the NLRB to file charges. We would expect these Notices to result in more charges being filed, particularly by non-union employees over disciplinary actions taken against them for raising complaints about working conditions, wages, or benefits to co-workers or management.

The Notice must be in English and in any other languages spoken by at least 20% of employees, if they are not able to read and write English. An employer that "customarily" posts Notices to employees on an Internet or Intranet site will be required to post this Notice on such a site.

How should employers respond? Refusing or failing to post the Notice could have serious consequences. The NLRB will consider a failure to post the Notice to be an Unfair Labor Practice. Additionally, if a Notice is not posted, the NLRB may toll the NLRA's six month Statute of Limitations for violations of the NLRA, by that employer.

We recommend that all employers who have groups of non-union employees that they wish to remain union-free, consider the following actions:

1. Effectively communicate the Company's position on unionization.
2. Train Managers and Supervisors on appropriate communications and conduct under the NLRA.
3. Review employment policies and practices to be sure that they are lawful.
4. Resolve or correct issues that irritate employees.
5. Review wage and benefit data of comparable jobs in the area to maintain competitiveness.
6. Analyze the groups of non-union employees as potential voting units to ensure that the employer has a chance to win an Election.

Due to the almost universal coverage of private sector employers under the NLRA, the members of our Firm's labor and employment practice group are ready to assist employers in complying with this new Rule and in taking appropriate steps to respond. We can assist employers in training supervision, reviewing policies, procedures and practices, analyzing appropriate units, and in effectively communicating with employees in compliance with the NLRA.



James B. Perry is a Member in the Detroit office. His expertise is in employment law, including maintenance of Union-free status programs, labor contract negotiation and administration, labor arbitration, and defense of employment litigation in federal and state courts, and before the NLRB and other government agencies. He can be reached at (313) 223-3096, or jperry@dickinsonwright.com.