

Employers: New Notice Posters Required Beginning in January

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Effective January 31, 2012 (postponed from the original November 14, 2011 effective date), employers large enough to be subject to the jurisdiction of the **National Labor Relations Board will be required by a new Federal Rule to post a Notice to Employees advising them of their rights under the National Labor Relations Act.** To determine whether a particular employer is large enough, the law will employ the NLRB's traditional specific industry, total revenue and dollar amount of interstate commerce standards. These standards are broad enough to cover most employers.

The essential requirements for the notice are as follows:

1) the Notice itself must be at least 11 inches by 17 inches in size; 2) it must be posted in conspicuous places, including all places where notices to employees concerning personnel rules and policies are customarily posted; 3) where 20% or more of an employer's workforce is not proficient in English *and* speaks a language other than English, the notice must be posted in the language the employees speak; 4) the employer must take reasonable steps to assure the Notice is not altered, defaced or covered by other material; and 5) the employer must also post the Notice on an intranet or internet site, if the employer customarily communicates with employees about personnel rules and policies by such means.

The Notice itself is nearly identical to the Notice already required be posted by federal contractors. It contains advice with regard to employee rights to form and join unions and engage in protected "concerted" activities, and employer "thou shalt nots," as well as a far shorter list of prohibited union conduct. There is only one reference in the Notice to an employee's right to "Choose not to do any of these activities, including joining or remaining a member of a union."

The consequences of a failure to post the Notice as and where required are:

1) the failure itself will be deemed an unfair labor practice, i.e., unlawful interference with employee rights; 2) an employer that fails to post the Notice may lose its ability to rely on the 6-month statute of limitations for employee filing of unfair labor practice charges; and 3) the failure to post the Notice may be used as evidence of the employer's unlawful motive in any proceeding where the employer's motive is in issue.

Recommended Steps: 1) determine, if necessary, whether your business meets the NLRB's jurisdictional standards; 2) assuming it does, determine the location or locations at which the Notice will need to be posted; 3) obtain, either from the NLRB, its website or your customary federal workplace notice provider the requisite number of copies; 4) assure posting by January 31, 2012 in a manner designed to prevent alteration or defacement of the Notice.

As an employer, you also have the right to communicate to your employees, more fully explaining to your employees both their rights to refrain from union membership and activity, as well as your own opposition to their representation by a union. We strongly recommend that any such communication, its substance and the form it takes, be reviewed in advance by competent labor counsel.

[NOTE: As of this writing, both the National Association of Manufacturers and a group of 26 states have filed lawsuits, each seeking to prevent the Notice Posting requirement from going into effect. Those lawsuits are not resolved and remain pending]

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