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## National Labor Relations Board Issues New Posting Requirement for Most Employers

By Sergio D. Simões

Most private sector employers must now make room on their workplace bulletin boards for yet another poster informing employees of their legal rights in the workplace. Under a new rule issued by the National Labor Relations Board (“NLRB”), all employers covered by the National Labor Relations Act (“NLRA”) must openly display an 11 by 17-inch poster advising employees of the right to unionize in workplace areas where notices are customarily posted. Employers utilizing electronic sites to distribute or post workplace policies must also electronically post the notice or the NLRB’s electronic link to the notice. Where at least twenty percent (20%) of employees at a workplace are not proficient in English, a translated notice available through the NLRB must also be posted.

The NLRB generally has authority over retail businesses that have gross annual sales of \$500,000 and make substantial interstate purchases or sales; non-retail establishments are covered if revenues across state lines are at least \$50,000. Nevertheless, the NLRB has asserted jurisdiction over employers without regard to the dollar standards for reasons of public policy, bringing most employers under the scope of the NLRA and consequently, the mandate of the posting rule.

The new posting notifies employees of their rights under the NLRA to coordinate 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. In addition, employees are instructed how to contact the NLRB with questions or complaints and are provided with specific examples of illegal employer and union activities.

Copies of the notice are available for download on the NLRB website (<https://www.nlr.gov/poster>) or at its regional offices. Alternatively, employers can purchase a set of workplace posters from a commercial supplier. All covered employers must display the poster **beginning November 14, 2011**. Failure to display the poster can result in serious legal consequences, including the filing of an unfair labor practice charge and extra time (beyond the normal six-month period) to file other unfair labor charges against the (cont'd ➔)

employer. Failure to display may also constitute evidence of an employer's "unlawful motive," an important factor in establishing other unfair labor practice charges.

As expected, the posting rule has already generated significant controversy. The National Association of Manufacturers has filed suit challenging the NLRB's authority to implement the posting requirement. Two bills recently introduced in Congress, the Employee Workplace Freedom Act and the Employer Free Choice Act, would effectively repeal the posting rule, but if passed would likely be vetoed by the President.

Because this new posting requirement raises important labor relations concerns, employers should consult with labor counsel regarding their options and duties.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Kathleen Connelly at [kconnelly@lindabury.com](mailto:kconnelly@lindabury.com) or Sergio D. Simões at [ssimoes@lindabury.com](mailto:ssimoes@lindabury.com)*



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