

## KD Alert: NLRB Rule Forces Employers to Post Yet Another Notice in the Workplace

The National Labor Relations Board (the “Board”) issued a final rule (“Rule”), effective November 14, 2011, requiring employers to post a notice in the workplace notifying them of their rights under the National Labor Relations Act (“NLRA”).

NLRA Section 6 empowers the Board to promulgate legislative rules “as may be necessary to carry out the provisions” of the Act. 29 U.S.C. 156. A determination of necessity under Section 6 made by the Board, as administrator of the NLRA, is entitled to deference. Known as The Notification of Employee Rights (“Notice”), the Rule closes a gap left by Congress in the NLRA. Previously, the NLRA – unlike many other labor and employment statutes enacted by Congress that contain express notice-posting provisions – did not have a notice posting requirement. Moreover, according to the Board, as rates of unionization have declined, employees are less likely to have experience with collective bargaining or to be in contact with other employees who have had such experience. The statutory gap is thus now important to the Board’s administration of the NLRA and its role in enforcing employees’ rights.

The Rule requires employers to inform its employees (both unionized and non-unionized) of their rights under the Act.\* The Notice is similar to the one required by the U.S. Department of Labor for federal contractors and 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 how to contact the Board with questions or complaints.

The NLRA specifically mandates that the Notice – which will be furnished by the Board to employers – be 11×17-inches and posted in “all places where notices to employees concerning personnel rules or policies are customarily posted.” The NLRA does not require that the poster be in color. The Board will furnish paper copies of the posters at no charge to employers who request them. In addition to posting the Notice physically in their facilities, employers who customarily post notices to employees regarding personnel rules or policies on an internet or intranet site will be required to post the Notice on those sites as well. Such employers may post either an exact copy of the poster, downloaded from the Board’s web site, or a link to the Board’s web site that contains the poster. The link to the Board’s web site must read, “Employee Rights under the National Labor Relations Act.” Translated versions will be available and must be posted at workplaces where at least 20% of employees are not proficient in English. If the employer posts notices to employees regarding personnel rules or policies on an internet or intranet web site, the employer is also required to electronically post the Notice in each of the languages spoken by 20% of all groups of its employees.

The rule also specifies penalties for an employer’s noncompliance with the NLRA, including the posting of a “Cease and Desist” Order. There is no monetary penalty or fine for failing to post the notice because the Board lacks the authority to impose penalties and fines.

### Steps to Take Now

Although legal, challenges to the enforcement of the Notice requirements could likely be filed. Despite this possibility, employers must nevertheless be prepared to comply with the posting requirement when it becomes effective and should take steps to educate supervisors on how to maintain a “union-free” environment.

*Undoubtedly, employees will have questions regarding the Notice, especially in non-unionized environments. It is important that supervisors are formally trained to effectively and legally address these questions, as well as any others related to the concept of unionization.*

*Remaining “union-free” is a matter of having open communication between employees and supervisors. Supervisors regularly make mistakes (which can set the basis for unfair labor practices [ULPs]) or avoid talking to employees when asked questions regarding unions. Both of these scenarios are detrimental to an employer who is trying to remain “union-free.”*

*Simple training of supervisors can prevent unionization without violating the laws. This training will also have the added benefit of teaching supervisors to become better communicators and better managers.*

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*\* Employers subject to the Board’s jurisdiction include private-sector employers located in the fifty states, which comprise the United States and the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, Saipan and Guam.*

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