

CLIENT ALERT

NLRB Imposes New Employee Rights Posting Requirement on Covered Employers

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The National Labor Relations Board (the "Board") has issued a Final Rule titled "Notification of Employee Rights under the National Labor Relations Act" ("Final Rule"). The Final Rule requires private sector employers subject to the National Labor Relations Act ("NLRA") to post, "in conspicuous places where they are readily seen by employees," the Employee Rights under the National Labor Relations Act notice ("Notice") issued by the Board. The posted Notice must be at least 11-by-17 inches in size, and in such format, type size and style as prescribed by the Board. Employers may download the Notice from the Board's website and print it in black and white. Covered employers will be required to post the Notice, beginning November 14, 2011, in the same locations as other workplace notices. The Notice must also be posted on an employer's internet or intranet site "if the employer customarily communicates with its employees about personnel rules or policies by such means."

The Board's stated intent in implementing this mandate is to inform employees of "their NLRA rights, together with Board contact information and information concerning basic enforcement procedures." Accordingly, the required Notice states that employees have various rights under the NLRA, including but not limited to the right to organize unions to negotiate with their employers regarding wages, hours, and other terms and conditions of employment, to form, join and assist a union, to bargain collectively with their employers, to engage in other protected concerted activity and to "[c]hoose not to do any of these activities, including joining or remaining a member of a union." The Notice offers examples of unlawful employer and, to a lesser extent, unlawful union conduct. It also instructs employees who believe that their rights, or the rights of others, have been violated to "contact [the Board] promptly to protect" their rights or otherwise seek assistance.

If twenty percent or more of an employer's workforce is not proficient in English and speak another language, the employer must post the Notice in the language that employees speak. If two or more groups constituting at least twenty percent of the workforce speak different languages, the employer has two options. It may either post the Notice in each of those languages, or post the Notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the Notice in the appropriate language. The Board will provide translations of the Notice upon request. If the translation is not available from the Board, the employer will not be liable for non-compliance until the Notice becomes available in that language.

Similar postings of workplace rights are required under other federal workplace laws. The Notice mandated under the Final Rule is similar in content and design to a notice of NLRA rights that must be posted by federal contractors, defined as prime contractors or subcontractors, under rules implemented by the U.S. Department of Labor ("U.S.D.O.L."). Contractors will be regarded as complying with the Final Rule if they comply with this U.S.D.O.L. posting requirement.

Employers will be able to obtain the Notice from the Board, free of charge, both in hard copy and electronically. Beginning November 1, 2011, hard copies will be available at the Board's headquarters office and its regional offices. Electronic copies of the Notice may be downloaded from the Board's website at <http://www.nlrb.gov>, printed in landscape format, in black and white, on two standard sized pages 8.5-by-11 inches in size. These pages may be taped or bound together to satisfy the size

mandate. Additionally, employers can satisfy the Final Rule by purchasing and posting a commercially available employee notice poster consolidating various federally mandated postings, including the Notice, into one poster. This option is acceptable only "so long as the consolidation does not alter the size, content, format, or size and style of type of the poster provided by the Board." Employers must also "take reasonable steps to ensure that the notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable."

Employers who do not comply with the requirements set forth in the Final Rule may face significant consequences. For example, the Board may treat the failure to post the Notice as an independent unfair labor practice. An employer's failure to post the Notice, according to the Final Rule, may be found to "interfere with, restrain, or coerce employees in the exercise of rights guaranteed" under the NLRA. According to the Final Rule, the Board may consider a "knowing and willful refusal to comply" with this requirement "as evidence of unlawful motive in a case in which motive is an issue." Failure to post the Notice may, under certain circumstances, result in tolling the six-month statute of limitations for the filing of an unfair labor practice charge, "unless the employee has received actual or constructive notice that the conduct complained of is unlawful." As an intended consequence of the Final Rule, employers may also be faced with defending otherwise time-barred charges if they fail to post the Notice as required.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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