

Employment Edge 124th Edition—NLRB Issues Notice of Collective Bargaining Rights Now Required of Private Employers

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The National Labor Relations Board (NLRB) has published a Final Rule requiring both union and non-union employers to notify employees of their rights under the National Labor Relations Act ("NLRA"). Employers may find they need to upsize their employee bulletin boards to post the 11 x 17 Notice about collective bargaining rights, which have been a subject of frequent media attention and controversy this year. The official Notice was released this week by the NLRB and is available for download through their website [here](#). Employers covered by the NLRA, which includes almost all private sector employers, must post the Notice in their workplaces no later than November 14, 2011. The Notice may be printed in color or black-and-white.

According to the NLRB press release announcing the final rule ([available here](#)) private-sector employers covered by the NLRA will be required to post the Notice where other workplace notices are typically posted. Also, employers who customarily post notices to employees regarding personnel rules or policies on an internet or intranet site will be required to post the NLRB's Notice on those sites as well. Copies of the Notice are also available from any of the agency's regional offices. Translated versions will be available, and must be posted at workplaces where at least 20% of employees are not proficient in English.

Among the facts highlighted in the NLRB fact sheet is a reminder that federal labor law rights under the NLRA apply to union and non-union workplaces alike. The NLRB describes the Notice as being similar to one required by the U.S. Department of Labor for federal contractors, which states that employees have the right to act together to improve wages and working conditions, to form, join or 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 on how to contact the NLRB with questions or complaints.

Most significantly, the rights set out in the Notice include the rights of employees to engage in "concerted activity" related to their employment. Concerted activity is a very broad concept under the labor law. Such activity occurs whenever two or more employees are acting together anywhere, in virtually any way, to communicate with each other, their employer, or the public about workplace terms and conditions. The NLRB has made clear its position that protected concerted activity may occur over social media, and that



employers violate the law and commit unfair labor practice if they interfere with such activity.

The NLRB's new rule has fueled the cultural and political struggle over unions and the rights of employees to engage in "concerted activity." The National Association of Manufacturers (NAM) has filed a federal lawsuit challenging the new rule. NAM's suit asks the federal court to issue an order and judgment declaring that the NLRB exceeded its authority by promulgation of the posting rule. Additional relief requested in the NAM suit includes preliminary and permanent injunctions preventing the NLRB from implementing and enforcing the rule. The court has not scheduled any action in that case, however, and employers must plan to post the Notice by November 14, pending any court action that would suspend or otherwise affect that requirement. If that happens we will send an update to this article.

Meanwhile, employers who have questions or concerns about the Notice posting requirement or about potential union activity in the workplace are invited to contact Mark S. Mathison or any other member of the GPM Employment and Labor Practice Group.

Resources:

Download the Official Notice:

<http://www.nlr.gov/poster>

NLRB Press Release:

<https://www.nlr.gov/news/board-issues-final-rule-require-posting-nlra-rights>

Regional Offices:

<http://www.nlr.gov/who-we-are/regional-offices>

Fact Sheet about Posting Rule:

<http://www.nlr.gov/resources/fact-sheets>

Federal Contractor Notice Requirements from U.S. Department of Labor:

<http://www.dol.gov/olms/regs/compliance/EO13496.htm>

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