

Employment Edge 126th Edition—NLRB Postpones Deadline for Employers to Post Notice of Collective Bargaining Rights

October 14, 2011

The National Labor Relations Board (NLRB) has postponed to January 31, 2012, the deadline for private employers under the NLRB's jurisdiction to post a new required Notice of Employee Rights. Significantly, the NLRB stated that the delayed deadline is to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses. The NLRB commented that the delay is made in the interest of ensuring broad voluntary compliance, noting that many private employers have had questions about whether they fall under the NLRB's jurisdiction and whether, accordingly, the notice requirement applies to them.

Earlier this year, the NLRB published a Final Rule, which requires both union and non-union employers who fall within the jurisdiction of the NLRB 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. View the official Notice on the NLRB Web site. Employers covered by the NLRA, which includes almost all private sector employers, must now post the Notice in their workplaces no later than January 31, 2012. The Notice may be printed in color or black and white. Copies of the required notice are available at no cost from the NLRB on its Web site, either by downloading and printing or ordering a print by mail.

According to the NLRB press release originally announcing the final rule, 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 percent 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 "form, join, or assist labor" unions and 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." Several federal lawsuits have been filed seeking to block implementation of the new rule, including suits by the National Association of Manufacturers (NAM) and the National Federation of Independent Business. 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. Whether these lawsuits will affect the new posting deadline is unknown and pending any further announcement from the NLRB, employers must plan to post the Notice by January 31, 2012. If the deadline changes again, GPM will send a client update with information explaining the change.

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 (612.632.3247, mark.mathison@lathropgpm.com), or any other member of the GPM Employment and Labor practice group.

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.