

VeritasTM Supplement

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NLRB, DOL Attacking Rights of Employers

NLRB Final Rule Will Require Notice Posting. The very employer-unfriendly Labor Board continues to place undue burdens on businesses with regulations that favor the interests of unions and hinder job growth. In a final rule published in the Federal Register, to take effect 75 days after publication, employers covered by the National Labor Relations Act (NLRA) will be required to post 11 x 17-inch workplace notices informing all employees of their rights (to join a union), beginning on or about November 14, 2011.

The Board's final rule provides that employers that fail to post the required notice will be subject to liability for committing an unfair labor practice under Section 8(a)(1) of the NLRA, and may face tolling of the NLRA's six-month statute of limitations on the filing of an unfair labor practice charge.

Despite the fact that, during the comment process preceding the final notice, a majority of the comments opposed the proposed rule or some of its features, the Board nevertheless felt the changes were necessary: "For employees to exercise their NLRA rights...they must know that these rights exist."

What the Rule Provides:

- An employer who fails or refuses to post the required notice would violate Section 8(a)(1) of the Act "to interfere with, refrain or coerce employees" in their rights guaranteed by the NLRA.
- An unfair labor practice could be filed against the employer who refused to comply and the Board could seek a cease and desist order.
- Board could excuse an employee who chooses to file a charge, from the six months after occurrence requirement.
- Board may consider a knowing, willful refusal to comply with this requirement to post the employee notice as evidence of unlawful motive in a case in which motive/animus is an issue.
- Employers must post the mandatory notice in all areas where it customarily posts notices to employees concerning personnel rules or policies.
- In a workplace where 20% of workers are not proficient in English or speak another language, the notice must be in the language the employees speak.
 - Post the NLRA notice in both languages or the language spoken by the greater number of employees.
- Employers that post notices to employees on Internet or intranet pages or bulletin boards must also post the NLRA notice "no less prominently than other notices to employees."

Query: If the NLRB was really interested in protecting workers, should they also be informing workers of the dangers of "card check" drives and publicizing employee rights under the law that also allows them to remove an unwanted union?

The time periods for elections, filing of voter lists, position statements and post-hearing briefs will be drastically shortened. Short of intervention by the courts, this regulation and posting requirement will become effective in November 2011.

DOL Changes Related to Employee Relations and Union Organizing. The Labor Management Reporting and Disclosure Act of 1959 (LMRDA), requires unions, employers and "persuaders" to report certain information and activities for public disclosure. Under LMRDA, reports must be made by any person who enters into an agreement or arrangement where an object is, directly or indirectly, to persuade employees to exercise or not exercise their rights to bargain collectively. The report must include the identity of the employer and the consultant or lawyer doing the persuading, the basis of the arrangement, the type of authority involved, the identity of the employee targeted and the union involved. Both the employer and the lawyer/consultant must file these reports or face criminal sanctions if they do not.

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