



EMPLOYMENT LAW ALERT

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## New NLRB Posting Requirement for Employers

The National Labor Relations Board ("NLRB"), by a 3-1 vote, published a new rule in the Federal Register on August 30, 2011 requiring most private employers (even those that are not unionized) to post a notice informing employees of their rights under the National Labor Relations Act ("NLRA"). The notice explains, among other things, that employees have a right to act together to improve wages and working conditions; to form, join and assist a union; to bargain collectively with their employer; to strike and picket under certain circumstances; and to refrain from any of these activities. It also provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

The new rule will be set forth in a new section of the Code of Federal Regulations at 29 CFR Part 104.

**Who is subject to the new posting requirement?** The new rule applies to almost all private-sector employers subject to the NLRA, including non-union workplaces, and therefore includes workplaces covering 93% of private sector employees that are non-union. Federal contractors are subject to the NLRA, however they may fulfill the NLRB's posting requirements by complying with the Department of Labor's notice-posting rule, 29 CFR Part 471. For more information on whether the new posting requirement applies to your company, you may refer to the [NLRB's fact sheet](#).

**When will the new notice be required?** Employers must begin posting the notice (both in the physical workplace and on the internet/intranet if applicable) on November 14, 2011. Free copies of the notice will be available at the NLRB's regional offices and on the [NLRB's website](#) beginning on November 1, 2011.

**Where must employers post the new notice?** The 11 x 17 inch notice must be posted in a conspicuous place where it can be readily seen by employees. Additionally, employers who customarily post notices to employees regarding personnel policies on an internet or intranet site must post the NLRB's notice there as well. If 20% or more of the employer's workforce is not proficient in English, the employer must post the notice in the language(s) its employees speak. If a translated version of the notice is not available from the NLRB, then the employer will not be held accountable for non-compliance with the rule until it becomes available.

**Consequences for failing to post the notice?** In most cases, the NLRB will assume that an employer who fails to post the notice was unaware of the rule and will post the notice when requested to do so. If, however, an employer knowingly and willfully fails to post the notice, it may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA. The NLRB may also extend the six-month statute of limitations for a charge involving an unfair labor practice if an employer fails to post the notice.

**Implications for employers:** Although the Obama Administration was unsuccessful in its efforts to secure passage of the Employee Free Choice Act, a bill which would have allowed unions to be certified based on signed authorization cards as opposed to a secret ballot election, this posting requirement is the latest in a series of ongoing efforts by the Administration to assist unions in their efforts to organize a greater percentage of American workers. Companies who continue to believe