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NLRB Issues Final Rule Requiring Employee Rights Notice

On August 30, 2011, the National Labor Relations Board issued a final rule requiring all employers covered by the National Labor Relations Act to notify employees of their rights under the Act and how to enforce them. The new rule requires employers to post a model notice where workplace notices ordinarily are posted. In addition, if the employer customarily communicates personnel rules or policies on the company's intranet or the Internet, the notice also must be posted on either site. The new notice requirement takes effect on November 14, 2011.

Background

The National Labor Relations Act (NLRA) applies to most private-sector employers, other than airline, railroad, and agricultural employers. On December 22, 2010, the National Labor Relations Board (NLRB) [proposed](#) a rule requiring employers subject to the NLRA to post notices informing employees of their rights under the NLRA, including the right to organize and bargain collectively with their employers and to engage in other protected concerted activity. (See our January 14, 2011 [For Your Information](#).)

The Final Rule

On August 30, 2011, the NLRB issued its [final rule](#) on notification of employee rights under the NLRA. The final rule largely follows the proposed rule but contains some modifications. With certain narrow exceptions, all employers subject to the NLRA will be required to post and maintain a notice of employee rights under the NLRA regardless of whether their employees are represented by a union.

BUCK COMMENT. *The Department of Labor (DOL) already requires federal contractors to post a similar [notice](#) of employees' NLRA rights under Executive Order 13496. Federal contractors that post the DOL's notice will be deemed to be in compliance with the NLRB's final rule.*

The Notice. The final rule establishes the size, form, and content of the employee rights notice. The rule requires that the notice be at least 11 x 17 inches in size. Employers may post notices in black and white or in color. Employers also must take reasonable steps to ensure the notices are not altered, defaced, or covered by other materials.

The text of the notice details employee rights under the NLRA to act together to improve wages, benefits, and working conditions; to organize; to form, join, and assist a union; to bargain collectively; to strike and picket; or to refrain from engaging in such activity. Along with examples of unlawful employer and union conduct, the notice provides instructions on how to contact the NLRB with questions or complaints. Copies of the notice are expected to be available from NLRB regional offices and for download from the NLRB [website](#) by November 1.

The Posting Requirement. Employers must conspicuously display the employee rights notice in their facilities where other workplace notices are ordinarily posted. Employers that customarily communicate personnel rules or policies on a company intranet or Internet site also must electronically post on those sites a copy of the notice or a link to the NLRB website that contains the notice. In a notable shift from the proposed rule, employers will not have to distribute the notice via email, voice mail, text messaging, or other electronic means even if they typically communicate with their employees in that manner.

The final rule also clarifies requirements for posting notices in foreign languages as well as in English. If at least 20 percent of the employer's workforce is not proficient in English and speaks the same foreign language, the employer will be required to post the notice in the language the employees speak. If the workforce "includes two or more groups constituting at least 20 percent of the workforce who speak different languages," the employer must either post notices in each of those languages or post the notice in the language spoken by the largest group of employees and provide the other employees with copies of the notice in the appropriate languages. The NLRB will make available translated versions of the notice. If the NLRB is unable to provide a notice in a particular language, the employer will not be liable for noncompliance until the notice becomes available.

Remedies for Noncompliance. Although there is no monetary penalty for failure to post the required notice, the final rule provides for three remedies for noncompliance. First, an unfair labor practice charge for an employer's failure or refusal to post the employee rights notice may be filed with the NLRB. Second, the NLRB may extend the 6-month statute of limitations to file other unfair labor practice charges against the employer. Finally, an employer's knowing and willful noncompliance with the rule may be considered as evidence of the employer's unlawful motive in other unfair labor practice cases in which motive is an issue.

***BUCK COMMENT.** In the final rule, the NLRB states that if an employer posts the required notice after an unfair labor practice relating to the posting requirement is filed, the NLRB expects that there rarely will be a need for further administrative proceedings. This position should help keep compliance cost down, especially for small employers who may be unaware of the requirement.*

Conclusion

The new NLRB posting requirement applies in both unionized and nonunionized workplaces and covers most private-sector employers as well as labor unions in their capacity as employers. In addition, the notice must be provided in non-English languages where at least 20 percent of the workforce is not proficient in English and speak the same foreign language. Unlike some other NLRB posting requirements that only provide for voluntary compliance, the new rule contains various substantive remedies for non-compliance. As such, employers will want to ensure that they are prepared to satisfy their notice-posting obligations when they become effective on November 14.

Buck's consultants are prepared to assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.