

L&E ALERT

September 30, 2011 (updated 10/05/11)

Final Rule Issued by the NLRB Requiring Posting of Notice of Employee Rights

Effective January 31, 2012 (extended from original deadline of November 14, 2011), all private sector employers subject to the National Labor Relations Act (NLRA)—both union and non-union—must post a notice informing employees of their rights under the NLRA. The notice can be downloaded from the National Labor Relations Board (NLRB) website in both an **11 x 17 size** and in a **2-page 8 ½ x 11 format**.

The NLRA was enacted by the NLRB in 1935 and is the federal law regulating most private sector labor-management relations in the United States. The NLRB believes that many employees protected by the NLRA are unaware of their rights under the law, and that the notice will increase their knowledge to enable them to better exercise their rights under the NLRA. Advising employees of their rights is central to advancing the NLRA's promise of "full freedom of association, [and] self-organization" for covered employees. NLRA Section 1, 29 U.S.C. Sec. 151.

As stated in the notice, the following are excluded from coverage under the NLRA: public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors who have been discriminated against for refusing to violate the NLRA may be covered).

This notice should be posted in the same place other legally required notices are posted throughout the employer's work areas. If employers regularly post policies and personnel rules on an intranet or internet site, the NLRA notice must also be posted on that site. Additionally, if more than 20% of an employer's workforce is not proficient in English but speak the same foreign language, the employer is required to post the NLRA notice in that language. There are other requirements for providing translations if 20% or more of the workforce speak different languages. Translations will be available on the NLRB website at www.nlr.gov.

Some small employers (those whose annual volume of business has only a slight effect on interstate commerce) are exempted from NLRB's jurisdiction, including the new NLRA Notice requirements. In the case of retail businesses, including home construction, the NLRB's jurisdiction covers any employer with a gross annual volume of business of \$500,000 or more. The NLRB's non-retail jurisdictional standard applies to most other employers, and the NLRB takes jurisdiction over an employer with an annual inflow (goods or services purchased by the employer from out of state) or outflow (the amount of goods sold or services provided by the employer out of state) of at least \$50,000.

It is imperative that employers post the NLRA notice in a proper and timely manner. Failure to do so may constitute an unfair labor practice, and an employer's willful failure to post the notice may be evidence of an unlawful motive in an unfair labor practice case. A charge alleging that an employer has failed to post the notice may be filed by **any** person or union—other than NLRB personnel—not just an employee.

Please Note

Nothing in this communication creates or is intended to create an attorney-client relationship with you, constitutes the provision of legal advice, or creates any legal duty to you. If you are seeking legal advice, you should first contact a member of the Labor and Employment Team with the understanding that any attorney-client relationship would be subsequently established by a specific written agreement with Harrang Long Gary Rudnick P.C. To maintain confidentiality, you should not forward any unsolicited information you deem to be confidential until after an attorney-client relationship has been established.

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