



SEPTEMBER 2011

## The NLRB Publishes Final Rule Requiring Employers to Post Notices of Employee Rights

The National Labor Relations Board (NLRB) issued its Final Rule on August 30, 2011, requiring employers — unionized and nonunionized — to post notices of their employees' rights under the National Labor Relations Act (NLRA). The NLRA is the primary law governing relations between unions and employers in the private sector and guarantees the right of employees to organize and bargain collectively with their employers and to engage in other protected concerted activity, with or without a union, or to refrain from all such activity.

Effective November 14, 2011, this rule requires all applicable employers to post an employee rights notice where other workplace notices are typically posted.

### CONTENT OF NOTICE

The required notice lists employees' rights under the NLRA to form, join, and support a union and to bargain collectively with their employer; provides examples of unlawful employer and union conduct that interferes with those rights; and indicates how employees can contact the NLRB, the federal agency that enforces these rights, to ask questions or to file complaints.

Employers are required to post the notices in English and in another language if at least 20 percent of their employees are not proficient in English and speak that other language. Employers will be able to download the notices from the NLRB website in November.

### FORM OF POSTING

The notice will be available in two formats for downloading: (1) a one-page 11 x 17-inch version and (2) a two-page 8.5 x 11-inch version, which must be printed in landscape format and taped together to form the 11 x 17-inch poster.

Employers may post exact duplicates of the notice supplied by the NLRB; they may also use commercial poster services that consolidate the notice on one poster with other federally mandated labor and employment notices as long as the consolidation does not alter the requisite size, format, content, or size and type style of the notice. Reproductions of the notice

may be in black and white rather than in color, provided that they otherwise conform to the NLRB-provided notice.

Employers must post the notice in conspicuous places where NLRA-covered employees are likely to see it. Specifically, employers must post the notice where other job-related employee notices are posted. In addition, an employer who customarily posts notices electronically must also post the NLRA rights notice where other employee notices are routinely placed on the employer's website.

Employers are also required to take reasonable steps to ensure that the notices are not altered, defaced, covered by any other material, or otherwise rendered unreadable.

## **EXEMPTIONS**

The posting requirement applies to all private-sector employers (including labor unions) subject to the NLRA, which excludes agricultural, railroad, and airline employers. Accordingly, this rule does not apply to the United States Postal Service, state government employers, or political subdivisions of state government employers.

Further, small employers not subject to the NLRB's jurisdiction are exempt from the posting requirements. The NLRB has chosen not to assert its jurisdiction over very small employers whose annual volume of business is not large enough to have more than a slight effect on interstate commerce — for example, gross annual volume of business is less than \$500,000 for retail, including home construction, or less than \$50,000 for nonretail involving goods sold or services provided. The standards that might excuse the posting of a notice based on the size or nature of the business are complex, and anyone wishing to rely on them should carefully review the details and limitations set forth in the Final Rule.

Federal contractors already required to post an almost identical notice of employees' rights will not have to post a second notice. The posting rule notice for federal contractors was summarized in the previous update "[US Labor Department Publishes Rule Requiring Posting of Employee Rights.](#)"

## **ENFORCEMENT PROCEDURES**

The Final Rule provides that employees may file complaints against employers who do not comply with these posting requirements.

Failure to post the required notice may be treated as an unfair labor practice under the NLRA. The NLRB may also extend the six-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer. If the NLRB finds that an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA.

Download the full text of the [Final Rule here](#).

Download the NLRB [Question and Answer Memorandum here](#).

Download the [text of the NLRB Notice here](#).

---

This Final Rule marks the first time that employers not otherwise covered as federal contractors have been required to post a notice summarizing the full range of employee rights under the NLRA. For more information, or if you have questions about training and employers' rights to communicate their own views regarding unionization, please contact one of the following attorneys:

Stephen W. Aronson  
(860) 275-8281  
[saronson@rc.com](mailto:saronson@rc.com)

Nicole A. Bernabo  
(860) 275-8394  
[nbernabo@rc.com](mailto:nbernabo@rc.com)

Alida Bogran-Acosta  
(617) 557-5963  
[abogran-acosta@rc.com](mailto:abogran-acosta@rc.com)

David J. Burke  
(203) 462-7507  
[dburke@rc.com](mailto:dburke@rc.com)

Britt-Marie K. Cole-Johnson  
(860) 275-8279  
[bcole-johnson@rc.com](mailto:bcole-johnson@rc.com)

Alice E. DeTora  
(860) 275-8234  
[adetora@rc.com](mailto:adetora@rc.com)

Jean E. Tomasco  
(860) 275-8323  
[jtomasco@rc.com](mailto:jtomasco@rc.com)

---

*© 2011 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.*

