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National Labor Relations Board Proposes Rule to Require Employers to Post Notices Advising of the Employees' Right to Unionize

Acting in part on a response to a petition filed on February 9, 1993 by Professor Charles L. Morris, the National Labor Relations Board (NLRB) published notice of a proposed rule in the Federal Register on December 22, 2010, requiring employers subject to the National Labor Relations Act (NLRA) to post a notice advising their employees of their rights under the NLRA to unionize, bargain collectively, picket or strike, and of their rights to be free from adverse actions from their employer for engaging in actions protected by the NLRA. Federal contractors have been required to post such a notice of rights under the NLRA pursuant to Executive Order 13496, issued January 30, 2009 and effective June 21, 2010.

The NLRA, enacted in 1935, did not include posting requirements. Almost all more recent federal employment laws (the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Americans with Disability Act, the Family and Medical Leave Act, the Uniformed Service Employment and Reemployment Rights Act, the Railway Labor Act, the Employee Polygraph Protection Act and the Migrant and Seasonal Agricultural Workers Protection Act) or implementing regulations have required that employers subject to these Acts be advised of their rights by posting in areas where the information is readily accessible to the employees. The proposed regulation is intended to include rights under the NLRA in the required notices.

The content of the proposed notice is set forth in Appendix A to the proposed regulation, and includes:

The right to organize, form or assist a union

The right to bargain collectively with the employer

The right to discuss the terms and conditions of employment or union organizing with co-workers or a union

The right to strike and picket for lawful purposes

The right to be free from employer interference or reprisal for engaging in conduct protected by the Act

The right to be free from unlawful actions by the union

Information on how to contact the NLRB

In addition to the physical posting of the notices, an employer that regularly communicates with its employees electronically will be required to also post the notice electronically, and if a significant portion of the employees are not proficient in English, they will be required to post the notice in the language which those employees speak. Translations of the notice will be provided by the NLRB.

The regulation will apply to all employers, including those already unionized. The only exceptions are those exempt from the NLRA (federal, state and local governments, Federal Reserve banks, employers subject to the Railway Labor Act, employers of agricultural workers, race tracks and small employers over which the NLRB has chosen through regulation or adjudication not to assert jurisdiction).

Employers not in compliance with the regulation when adopted and effective, would not be subject to a fine or penalty, but the failure to post would permit the NLRB to extend the six-month statute of limitations for filing an unfair labor practice against the employer, and could be used by the NLRB as evidence of an unlawful motive by the employer in an unfair labor practice case involving other alleged violations of the NLRA.

What This Means to You

The proposed regulation is subject to public comment until February 22, 2011 and may be modified after the comments are received and considered. Should you desire to comment, those comments should be submitted electronically to www.regulations.gov or by mail or hand-delivered to Lester Heltzer, Executive Secretary, NLRB, 1099 14th Street, NW, Washington, D.C., 20570.

Until the regulations are finalized and effective, no action on your part is necessary. If and when the regulation becomes effective after the comment period, we will advise you of the requirements of the final regulation and its effective date.

Contact Info

For additional information and assistance, please contact your Husch Blackwell attorney.

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