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September 7, 2011

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NLRB Requires Employers to Post New Employee Rights Notice

By Matthew J. Feery, Esq.

On August 30, 2011, the National Labor Relations Board ("NLRB") published a final rule that will require all employers *subject to the National Labor Relations Act* ("Act") - regardless of whether the employer has unionized employees - to post a new employee rights poster in the workplace effective November 14, 2011. Failure of a covered employer to comply with the new rule carries potentially significant consequences.

The new poster, entitled "Employee Rights under the National Labor Relations Act" (the "Notice") must be at least 11"x17" in size and posted "in conspicuous places where they are readily seen by employees, including all places where notices to employees concerning personnel rules are customarily posted." Additionally, an employer who "customarily communicates with its employees about personnel rules or policies" by means of electronic posting on an intranet or internet site must then also post the new poster on that intranet or internet site.

Moreover, some employers will need to post the new Notice in multiple languages. If at least 20% of an employer's workforce is "not proficient in English" and speaks another language, then the employer must also post a copy of the Notice in that language. If an employer has two or more groups of employees each constituting 20% of the workforce and who each speak a different language, then either a Notice must be posted in each of those languages or the employer can post a Notice in the language of the largest group of such employees and provide the other employees with a copy of the Notice in the appropriate language. An employer will not be liable for non-compliance with the new rule if it requests a copy of the

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Notice in a language that is not available from the NLRB - that is, until a Notice in that language becomes available, at which point the employer must comply with the rule.

Failure to post the Notice after November 14, 2011 will be considered an unfair labor practice under Section 8(a)(1) of the Act. Moreover, failure to post the Notice will extend the time by which an employee has to file a charge of an unfair labor practice. Typically, an employee has six months after actual or constructive knowledge of the alleged unlawful conduct by the employer under the Act in which to file a charge. However, because the NLRB considers the purpose of the new Notice to provide that actual or constructive knowledge to employees, the new rule states that failure to post the Notice will toll the six-month statute of limitations for employees to file a charge, under the theory that, basically, employees cannot file charges when they do not have the new Notice to inform them of their rights.

The new rule was not implemented without controversy. The NLRB acknowledges that the majority of comments it received on the proposed version of the rule either opposed it in whole or in part - including a strong dissent from Board Member Brian Hayes. Hayes challenged, among other aspects of the rule, whether the NLRB even has statutory authority to require employers to post the Notice. With this history, a legal challenge to the rule should not be unexpected.

Nonetheless, employers should not rely on any legal challenge resulting in an injunction that will stop the new Notice requirements from going into effect on November 14, 2011. Employers should begin preparing to comply with the new rule now by [reading up on the new rule](#) for their own edification and by obtaining all needed copies of the Notice, either from an [NLRB Regional Office](#) or from the NLRB's website (or [here](#)). There is still plenty of time for employers to comply with the rule, but given the consequences of failing to comply with the new rule, employers with any questions should contact legal counsel.

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