

GONZALEZ
SABGIO
HARLAN

Special Alert!

December 23, 2010

Sponsored by the GSH Employment Group



Vincent T. Norwillo,
Esq.

www.gshllp.com

(216) 771-9300

Want more
Information on
this topic?

[CLICK HERE!](#)

NLRB Proposes Rule Requiring Notice to Employees of their Rights to Join and Form Unions

By: Vincent T. Norwillo, Esq.

Earlier this year, President Obama appointed Mark Pearce and Craig Becker to vacancies on the National Labor Relations Board (Board), the agency responsible for the enforcement of federal labor law. These appointments established a democratic majority on the Board for the first time in a decade. In addition, both Pearce and Becker, along with current Board Chairperson Wilma Liebman, had advocated more liberal use of the Board's administrative rule-making power in order to implement changes in federal labor policy. Through rule making, the Board members are able to make faster, comprehensive revisions, rather than rely on the incremental change available through case-by-case decision making. Having resolved a considerable backlog of cases over the last six months, the new Board majority has turned its attention to exercising this rule-making authority. Their initial action -- the Board's first use of its rule-making power in almost six years -- suggests that some comprehensive changes may be on the way.

On Tuesday, the Board submitted a Notice of Proposed Rulemaking published in the Federal Register. This proposed rule would require private businesses to post notices in employee break rooms or other prominent locations to explain workers' rights to bargain collectively, distribute union literature, or engage in other union activities without reprisal. In a statement, the Board explained the Notices were required because many employees "are unaware of their rights" under federal labor law.

Labor advocates endorse the proposed rule. AFL-CIO President Richard Trumka called the proposal a "common sense policy" that is necessary given "widespread misunderstanding about the law and

many workers' justified fear of exercising their rights under it." In contrast, management advocates are generally wary of the proposal, concerned that the notices could be misinterpreted as government endorsement of unions.

The proposed rule would impose not only new obligations on employers, but also sanctions for any violation. Specifically, as proposed, a failure to post the new "Notice of Employee Rights Under the National Relations Act" would be an unfair labor practice. In addition, any failure to post the Notice would toll the applicable six-month statute of limitations, providing workers and unions more time to decide whether to file unfair labor practice charges. Finally, and most critically, the "knowing failure to post the notices [will be] evidence of unlawful motive in unfair labor practices." This union animus or unlawful motive proposal is significant. If failure to post the notice can, in fact, be interpreted as *per se* evidence of union animus, the rule could result in more administrative complaints issued by the Board and greater litigation.

The proposed rule will not take effect for at least 60 days, during which time the NLRB is accepting public comments. For information on the process to submit a public comment, access the following link:

www.nlr.gov/About_Us/news_room/Notice_for_Rulemaking/

In the interim, understand that this proposed rule should serve as a harbinger for future Board initiatives. Should you have any questions about this proposed rule or any other labor and employment compliance issues, please contact the undersigned at Vincent.Norwillo@gshllp.com. Otherwise on behalf of the firm, I wish you all the very best this Holiday Season and extend all our wishes for a Peaceful and Prosperous New Year.

Office Locations:

Arizona
California
Georgia
Illinois
Indiana
Iowa
Nevada
New Jersey
New York
Ohio
Tennessee
Washington D.C.
Wisconsin

www.gshllp.com

The 60-Second Memo is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.