



NATIONAL LABOR RELATIONS BOARD

Notice Posting Rule

www.nlrb.gov

<http://federalregister.gov/a/2011-21724>

WHAT?

- RULE: All employers subject to NLRA must post Notices to employees, in conspicuous places, informing them of their NLRA rights.
- NOTICE:
 - Summary of NLRA rights & jurisdiction
 - Examples of violations
 - Contact information for NLRB
 - Description of enforcement procedures
 - Information about filing a charge and statute of limitations

WHY?

- Many employees unaware of their NLRA rights and cannot effectively exercise those rights.
- Intended effects of Rule are to increase knowledge of NLRA and to better enable exercise of rights
- May promote statutory compliance

WHO?

- APPLIES TO:

All employers subject to the NLRB's jurisdiction

- DOES NOT APPLY TO:

- Businesses that do not meet the Board's jurisdiction requirements

- Federal contractors in compliance with DOL posting requirement

- United States Postal Service

WHEN?

- Rule becomes effective 75 days after published in the Federal Register. Rule published on August 30, 2011.
- Rule is effective on **November 14, 2011.**

WHERE?

- Physically - conspicuous places where notices concerning personnel rules or policies are posted
- Electronically - internet or intranet site - exact copy or link entitled “Employee Rights under the National Labor Relations Act” to notice on NLRB’s Web site
- Includes employers whose employees work at remote sites
- Own premises or worksites where employer has ability to post notice or cause notice to be posted
- NOT by email, Facebook, Twitter, text, IM, fax, VM

HOW?

- Jurisdiction?
 - *An Outline of Law and Procedure in Representation Cases* on Board's Web site
 - Table to § 104.204 of Notice Posting Rule
- Notices?
 - NLRB will provide copies on request at no cost
 - Download Notice from Board's website and print it out. AVAILABLE NOW. Two formats:
 - One-page 11x17-inch
 - Two-page 8 ½ x11-inch - must be printed in landscape format and taped together
- MAY reproduce exact duplicates of Notice, but MAY NOT alter it

WHAT ELSE?

- Non-English Notices

- Must post non-English Notice if significant number of employees not proficient in English
- “Significant” = 20% or more
- Two or more groups – must post Notice in language spoken by larger group and may post Notice for other group or distribute copies of Notice to employees
- Less than 20% -- encouraged - not required - to provide Notice or direct to Board’s Web site
- Translations will be provided and available on Board’s website
- If Notice not available, requesting employer will not be liable for non-compliance until Notice becomes available

OR ELSE WHAT?

- Non-Compliance

- Violation of Section 8(a)(1) of the NLRA
- May be grounds for tolling statute of limitations in Section 10(b).
- Knowing and willful failure to post may be evidence of unlawful motive

- No fines

- No inspections

- Does not alter union access standards

Section 8(a)(1)

- Unaware of Rule? Expected that upon notification by NLRB, employer will comply without need for formal action.
- When that is not the case, Board may find violation of Section 8(a)(1) and require employer to post Notice of rights and traditional remedial notice.
- ULP for employer to interfere with, restrain, or coerce employees in the exercise of Section 7 rights:
 - Forming, or attempting to form, a union;
 - Joining a union whether recognized by employer or not;
 - Assisting a union in organizing;
 - Refusing to do any or all of these things
 - Engaging in protected concerted activity

Section 10(b)

- In pertinent part: “. . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made”
- Failure to post deprives employees of knowledge of rights and of availability of avenues of redress.
- Employee may be excused from 10(b) if employer failed to post Notice, unless employee received actual or constructive notice that conduct is unlawful.
- Does not apply to charges filed by unions

Unlawful Motive

- If employer knowingly and willfully fails to post Notice, failure could be considered evidence of unlawful motive in a ULP case.
- Failure must be both knowing *and* willful -- i.e., employer must have actual knowledge of Rule and yet refuse, on no cognizable basis, to post Notice.
- NLRB's burden to prove failure was willful
- Willful failure not conclusive proof of unlawful motive, but merely evidence that could be considered