

Cooley

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In our [March 4, 2011 Alert](#) we described the proposed rule of the National Labor Relations Board (NLRB) concerning the posting of a workplace notice informing employees of their rights under the National Labor Relations Act (NLRA). The NLRB has now issued its final rule regarding this notice. The required notice informs employees of their rights to act together to improve wages and working conditions, organize or join a union, bargain collectively, or choose not to take part in any of these activities. The notice also provides examples of unlawful employer and union conduct, and informs workers how to contact the NLRB with questions or complaints.

Which employers are affected?

This rule affects most private-sector employers regardless of whether or not their workforce is represented by a labor organization. Generally, the rule only exempts agricultural, railroad and airline employers and very small employers (i.e., non-retail employers with an annual gross volume of less than \$50,000 and retail employers with an annual gross volume of less than \$500,000). **The NLRB assumes that this rule will affect the "great majority" of the nearly 6 million small businesses in the United States.**

What are employers required to do?

Covered employers must post an 11-by-17 inch copy of the notice in all areas where they customarily place notices to employees concerning workplace rules or policies. If employers customarily post such rules and policies on internet or intranet websites, they are required to post the notice there as well. Employers are not required to distribute the posting by e-mail, Twitter or other electronic means. The notice must be posted in English and in another language if at least 20% of employees are not proficient in English and speak the other language. The NLRB will provide translations of the notice when they are available and, if a translation of the appropriate language is not available, the employer will not be liable for non-compliance.

How do employers get copies of the notice?

Employers may request copies of the notice from the NLRB or its regional offices. **In addition, the notice is now available (in both English and Spanish) for downloading at [NLRB's website](#).**

When must employers post the notice?

Employers must post the required notice **by January 31, 2012.**

What are the penalties for non-compliance?

Employers that fail or refuse to post the required notice would be violating Section 8(a)(1) of the NLRA, which prohibits employers from interfering with, restraining or coercing employees in exercising their rights under the NLRA. Although the NLRB cannot fine employers for failing to post the notice, an employer's knowing and wilful failure to post the notice may be considered evidence of

unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA. The NLRB may also extend the 6-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer.

If you would like to discuss these issues further or have any questions about this *Alert*, please contact one of the attorneys listed above.

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