

IMPORTANT NOTICE FOR PRIVATE SECTOR EMPLOYERS

Deadline Extended for Federal Obligation to Notify Employees of Their Rights Under the National Labor Relations Act

***** Update: December 28, 2011 *****

The NLRB has announced that it is again postponing the date by which private sector employers must post the Notice of Employee Rights under the NLRA from January 2012 to **April 30, 2012**. The Board made this decision at the request of a Federal Court which is considering a legal challenge to the rule.

The rule requiring this notice was described in our September 2011 Alert below.

As stated in our earlier Alert, most private sector employers are covered by the NLRA, however if you have questions as to the rule's applicability to your organization or have other questions concerning this rule please contact *Thomas E. Brydges* (716.843.3812 or tbrydges@jaeckle.com) or any of our Labor and Employment attorneys listed below.

September 12, 2011 - The National Labor Relations Board (NLRB) has published its final rule mandating that virtually all* private-sector employers subject to the National Labor Relations Act ("The Act") notify employees of their rights under the Act by posting notice(s) in the workplace. **This rule applies to both unionized and non-unionized employers.**

~~Employers should begin posting the notice no later than November 14, 2011.~~

**Certain small employers in terms of volume of business and other entities over which the Board does not currently have jurisdiction are not subject to the rule. Please contact one of the attorneys below if you would like to know if your organization is exempt from the rule.*

The employee rights identified in the notice include, but are not limited to, the right to join or organize a union, to act together with co-workers to improve conditions, to discuss wages, benefits or other terms of employment with co-workers or a union, to collectively bargain with their employers, to strike and picket, or to refrain from such activities. The Notice informs employees that they should contact the NLRB when they believe their rights have been violated and provides the contact information.

The notice must be posted conspicuously in locations that can be seen by all employees, including locations where the employer posts other required notices. Employers must also post the notice on an intranet or an internet site if personnel rules and policies are customarily posted there. Federal Contractors who already post a similar notice pursuant to Executive Order 13496, will be in compliance with this NLRB notice rule as well.

The notice of rights must be posted in either of two formats (11 x 17-inch one-page poster or a two-page 8 1/2 x 11-inch version). Copies of the actual notice will be available on the NLRB website and from NLRB regional offices at no charge by November 1, 2011. Translated versions will be available and must be posted at workplaces where at least 20% of employees are not proficient in English.

There will likely be legal challenges to this rule on the basis that the NLRB exceeded its authority in promulgating it. However, until such time that an appropriate court makes such a determination, compliance is recommended. Failure to post the notice may result in a Board finding of an unfair labor practice in violation of Section 8(a)(1) of the Act. In addition, if the Board finds that an employer "knowingly and willfully" failed to post the notice, it may consider this evidence of an anti-union motive for the employer's acts in a subsequent proceeding.

In light of this new requirement and the questions it is likely to generate from your employees, it would be wise, particularly for employers who do not have a union workforce, to brief supervisors and managers as to why the poster is required (NLRB rule) and what they can lawfully say and do in response to employee inquiries or protected activities by employees.

If you would like further information regarding this notice requirement, how an employer can effectively and lawfully respond to union organizational campaigns or other employment related questions, contact Thomas E. Brydges, (716) 843-3812 (tbrydges@jaeckle.com) or any of our Labor and Employment attorneys.

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