



Did you know your company could be Unionized?

By Dianna D. McCarthy and Robyn Silvermintz

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On April 30, 2012, most private sector employers will be required to post a notice explaining employees' rights under the National Labor Relations Act (the "Act"). The legislation was passed due to the National Labor Relations Board's (the "Board") concern that most employees are unaware of their rights under the Act. The Act guarantees that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities". The Board was concerned that employers were not required to inform employees of their rights under the Act. Thus, the posting requirement will increase employees' awareness of their rights under the Act.

The notice should be posted in a conspicuous place where other notifications of workplace rights and employer rules and regulations are posted. The poster is also required to be 11x17 inches and can be printed in either color or black and white. A copy of the Employees' Rights Notice can be found on the Board's website at the following link:

[NLRB Employee Rights Poster](#)

All employers who fall under the Board's jurisdiction will be required to post the notice. The Board's jurisdiction is broad and covers most non-government employers in the U.S., including non-profits, employee-owned businesses, labor organizations and non-union businesses. Retailers fall under the Board's jurisdiction if they have a gross annual volume of business of \$500,000 or more (\$100,000 for shopping centers and office buildings). For non-retailers, jurisdiction is based on whether the amount of goods sold or services provided by the employer out of state or purchased by the employer out of state is at least \$50,000.

There are other businesses that fall under the Board's jurisdiction, but may not be aware of it, such as: trucking and shipping companies; private bus companies; warehouses and packing houses; hospitals; medical and dental offices; social services organizations; child care centers; residential care centers; nursing homes; law firms and legal services organizations; and cultural and educational centers.

The date for the notice-posting requirement to go into effect has been postponed on two occasions due to the number of comments received regarding said legislation. In addition, the Coalition for a Democratic Workplace and several other plaintiffs are currently challenging the posting requirement in Federal Court. The plaintiffs argue that the Board has lost its quorum to enforce the regulation due to the expiration of a Board member's term, and the failure of President Obama to appoint a new Board member with the advice and consent of the U.S. Senate as required by the Constitution. While President Obama announced the appointment of three new members to the Board, the President failed to get the consent of the Senate in doing so. Thus,



according to the plaintiffs, the appointments are unconstitutional and invalid. With only two members currently serving on the Board, the plaintiffs are asking a Federal District Court Judge to declare that the Board no longer has the authority to enforce the posting requirement set to go into effect on April 30, 2012.

What does this mean for employers? Until the Federal Court decides otherwise, employers should be prepared to post the Employees' Rights Notice on April 30, 2012. In addition, failure to comply with the posting requirement may result in an unfair labor practice charge by employees, unions or others. In most instances, the Board will give an employer an opportunity to comply with the posting requirement and close the matter without further action. However, if it is proven that an employer knowingly and willfully failed to post the Notice, said failure may constitute evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the Act. Thus, it appears that the Board will give employers one get out of jail free card for failing to post the Notice.

If you have any questions or would like to discuss this issue, please contact:

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