



Labor & Employment Alert
August 2011

**New Employee Rights Notices Must Be Posted In Almost All
Private Sector Workplaces By November 14**

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This Tuesday, August 30, 2011, the National Labor Relations Board will publish a Final Rule mandating the posting of an 11" x 17" Notice in virtually every private sector workplace in the country¹ – unionized or not - informing employees in considerable detail of their rights under the National Labor Relations Act. Because employee rights under the Act apply to **both unionized and non-unionized workplaces**, all employers subject to the Board's jurisdiction are required to post the Notice. This Rule is anticipated to take effect on Monday, November 14, 2011.

Employers also are required to post the notice on an intranet or an internet site if personnel rules and policies are customarily posted there, or to provide a link to the Notice on the Board website, www.nlr.gov . Employers are not required to distribute the posting by email, 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 that other language. The Board will provide translations of the notice, downloadable from the Board's website.

Failure to post the notice may be treated as an unfair labor practice under the Act. As the Board itself noted, "if an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in an unfair labor practice case".

The posting of this Notice may generate questions from and conversations with your employees. Be aware that inadvertent misstatements or carelessness in these types of conversations can generate costly and time-consuming litigation as employees may file unfair labor practice charges against employers even where no union is involved. Now is the time to educate yourself and your supervisors about what is and what is not lawful to say to employees.

¹ The rule applies to all employers subject to the Board's jurisdiction, although the Board has chosen not to assert its jurisdiction over very small employers. If you have a question about whether or not you are covered, you may contact Geoffrey P. Wermuth in our office or your labor counsel.



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Selected parts of the required text of the Notice to Employees read as follows:

“Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees’ own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.



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- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so...

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an



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employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>....”

The full text of the notice is available on the Board's website as an appendix. The official downloadable notice and translations should be available on the Board's website after the Final Rule's publication.

This Alert was prepared by Geoffrey P. Wermuth, a partner in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Wermuth, the attorney assigned to your account, or your own labor counsel.

Murphy, Hesse, Toomey & Lehane, LLP, is a multi-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm emphasizes labor & employment law, employee benefits law, municipal law, public sector labor law, education law, special education law, and related litigation.

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