



MANAGEMENT LABOR &  
EMPLOYMENT LAW

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## EMPLOYMENT LAW ALERT

### NLRB ISSUES RULE REQUIRING POSTING OF EMPLOYEE RIGHTS

The National Labor Relations Board (“NLRB” or the “Board”) has issued a Final Rule that will require most employers to notify employees of their rights under the National Labor Relations Act (“NLRA” or the “Act”). The Final Rule was published in the Federal Register on August 30, 2011 and will take effect on November 14, 2011.

The Notice of Employee Rights (the “Notice”) required by the Final Rule states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to refrain from any of these activities. The Notice provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions and/or complaints.

The Board received approximately 7000 comments following publication of its Proposed Rule in the Federal Register. Despite the obvious controversy the Proposed Rule generated, the Final Rule differs only slightly from the Proposed Rule. For example, employers will not be required to distribute the Notice via email and they may post notices in black and white or in color.

The major points of the Board’s Final Rule are summarized below:

- The posting requirement applies to all private-sector employers subject to the NLRA, which does not include agricultural, railroad and airline employers. The Board has chosen not to assert its jurisdiction over very small employers. Nevertheless, most employers will have to post the Notice.
- The Notice must be posted “in conspicuous places where [it] is readily seen by employees.” In short, the Notice should be posted where other workplace notices are typically posted. Employers who customarily post notices to employees regarding personnel policies on internet or intranet sites will be required to post the Board’s notice on those sites as well.
- The Board will provide copies of the Notice on request at no cost to the employer at its offices beginning on or before November 1, 2011. Employers can also download the notice from the Board’s website and print it out on one 11-by-17-inch paper or two 8-by-11-inch papers taped together. Printing the Notice in black and white will be sufficient.
- 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 Board will provide translations of the notice in the appropriate languages.

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- It does not matter whether you currently have a union or not. In other words, you still have an obligation to post the Notice even if you are a nonunion employer.
- Failure to post the notice may be treated as an unfair labor practice under the National Labor Relations Act. The Board investigates allegations of unfair labor practices made by employees or unions. You can expect that employees who are in favor of union organizing will complain to the Board if you do not post the Notice.
- The Board can also extend the 6-month statute of limitations for filing a charge involving other unfair labor practice allegations upon a failure to post the Notice. If an employer “knowingly and willfully fails to post the notice,” the failure to post may be considered evidence of unlawful motive in other unfair labor practice cases.
- As mentioned, the Final Rule does not take effect until November 14, 2011. You need *not* post the Notice until that date.

Attorneys at Kruchko & Fries will continue to monitor future developments relating to the Board’s new posting requirement. Unless there is court action delaying implementation of the Final Rule, employers should make sure the Notice is posted on November 14<sup>th</sup>. Please note that once the Notice is posted, employees may have questions. Most of these questions will likely be directed to supervisors. Thus, your supervisors should be trained on how to respond to questions about the NLRA and unions in general. If you have questions about the scope of such training or the Board’s Final Rule, contact any attorney at Kruchko & Fries.

Please contact any attorney at Kruchko & Fries if you have any questions about this article. For convenience, e-mail us at [info@kruchkoandfries.com](mailto:info@kruchkoandfries.com) or call (410) 321-7310 or (703) 734-0554. Kruchko & Fries is committed to an intensive employment law practice limited to the representation of management in all phases of labor, employment and benefits law. Our Firm’s practice is concentrated in Maryland, Pennsylvania, Virginia and Washington, D.C.; however, our clients are located throughout the country.