

CLIENT ALERT: NLRB Orders Employers to Post Notice of Employee Rights

In a final rule published on August 30, 2011, the National Labor Relations Board has ordered covered, private sector employers to post a notice of employee rights under the Nation Labor Relations Act. The final rule takes effect 75 days after publication so that notices must be posted on November 14, 2011.

Generally, covered employers are those private sector employers engaged in interstate commerce who meet jurisdictional standards set by the NLRB. The general retail standard includes businesses with an annual gross volume of \$500,000 or more. The general non-retail standard includes businesses with an annual inflow or outflow across state lines that meets or exceeds \$50,000 annually. The rule applies to both union and non-union workplaces where these jurisdictional standards are met.

In addition to posting a physical copy of the notice, employers must post the notice on an internet or intranet site if personnel rules and policies are customarily posted on those sites. Employers are not required to distribute the notice by electronic means. Also, there are no record keeping or reporting duties set forth by the final rule.

Translated versions of the notice must be posted at workplaces when at least 20% of employees are not proficient in English. If an employer's work force includes two or more groups totaling at least 20% of employees who are not proficient in English, then the employer must either post the notice in both languages or post the notice in the language spoken by the greater number of employees, while providing copies in the second language to employees who are not proficient in English.

Copies of the notice will be available on or before November 1, 2011, at the Board's website at www.nlrb.gov or can be obtained by contacting the NLRB at its headquarters or regional offices. (After it is released, MBJ will provide copies or a link to the final notice at www.morganbrown.com)

Federal contractors are already required to post a notice of employee rights pursuant to Department of Labor Rules and will be in compliance with the NLRB

rule if they post the Department of Labor notice.

The final rule indicates that employers who fail to post the required notice may be found to have violated Section 8(a)(1) of the National Labor Relations Act. The typical remedy for such a violation is to post a notice for 60 days advising employees of the unfair labor practice. Additionally, the failure to post the notice may result in extending or tolling the Act's six (6) month statute of limitations for filing an unfair labor practice charge. Finally, a willful or knowing failure to post may be considered evidence of unlawful motivation in an unfair labor practice case involving other alleged violations of the Act.

Please contact your Morgan, Brown & Joy attorney with any questions you may have concerning an employer's obligation to post the notice of employee rights under the National Labor Relations Act.

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