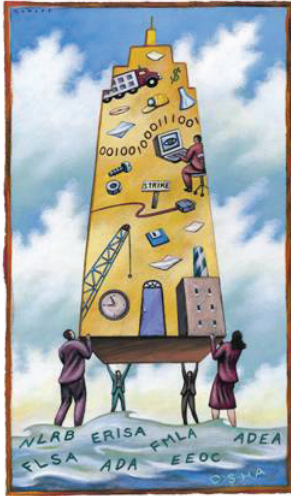


EMPLOYMENT BULLETIN

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New Federal Posting Requirement: Employee Rights Under the National Labor Relations Act

As of November 14, 2011, all employers subject to the National Labor Relations Act ("NLRA") must post a notice in a conspicuous place informing employees of their rights under the NLRA. The notice, which will be drafted and published by the National Labor Relations Board ("the Board") and will identify itself as a government publication, provides employees with a summary of their rights under the NLRA along with illustrative examples of general circumstances that violate those rights. Additionally, the notice contains information about the Board's jurisdiction, contact information for the Board, a description of basic procedures used to enforce NLRA rights, and information about filing a charge with the Board. The notice also informs employees of the six month statute of limitations for filing a charge with the Board and advises employees to contact the Board with specific questions. Finally, the notice affirms that unlawful conduct will not be permitted and that the Board will prosecute violators.

The Board recently adopted this new posting requirement because of a belief that many employees protected by the NLRA are unaware of their rights under the act and the Board believes that the new posting will inform employees of their NLRA rights. Therefore, in addition to requiring posting in a conspicuous place, the Board requires that the notice be posted in every language spoken by at least 20 percent of the employer's work force. Additionally, employers who customarily post notices to employees on an internet or intranet site are required to post an electronic copy of the Board's notice on those sites as well. Furthermore, if an employer has remote or referral work sites, a copy of the notice must be posted at each remote or referral work site if at all possible.

Although compliance with the new rule is required of all employers subject to the NLRA, the Board will not inspect employer locations to ensure compliance with the rule. Instead, it will rely on employees and union representatives to report compliance failures to the Board. The Board expects that most violations of the posting requirements will be due to lack of knowledge of the new posting rule, and therefore, upon learning of a violation, the Board will usually make a reasonable effort to persuade the employer to post the notice expeditiously before taking further remedial action. However, failure to post the notice as required by this new regulation may be found to be an unfair labor practice. It may also, in appropriate circumstances, be grounds for delaying the running of ("tolls") the six month statute of limitations for filing a claim by an employee.¹ Additionally, a knowing and willful failure to post the notice may be found to be evidence of an unlawful motive in an unfair labor practice case.

¹ Because the unions routinely deal with issues arising under the NLRA, the tolling provisions in the final rule apply only to those charges filed by employees and not to charges filed by a union.

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Beginning in November, employers will be able to obtain copies of the notice by contacting the Board at any one of its offices, or by downloading and printing a copy from the Board's website (www.nlrb.gov). The Board will provide copies in English as well as any other language spoken by at least 20 percent of an employer's workforce. Finally, once an employer obtains a copy of the notice, the employer is free to copy and consolidate the notice as long as the copying or consolidation does not alter the size, format, content or size and font of the original notice.

Babst Calland's Employment and Labor Services Group will continue to keep employers apprised of further developments related to this and other issues. If you have any questions or need assistance in addressing the above-mentioned area of concern, please contact John McCreary at 412-394-6695 or jmccreary@babstcalland.com.