

Labor Relations and Licensees

What Licensees Need to Know about Employees' Rights Under the National Labor Relations Act

BY KEVEN DANOW

The National Labor Relations Board (NLRB) issued a Final Rule, effective November 14th, 2011, that requires all employers to notify their employees of their rights under the National Labor Relations Act (the NLRA).

Most licensees will be surprised to learn that they come under the jurisdiction of the NLRB.

Small vs. Large: Important Distinction

The NLRA applies to employees in most private-sector workplaces, including manufacturing plants, retail centers, private universities and health care facilities. The NLRB has chosen not to assert its jurisdiction over very small employers whose annual volume of business is not large enough to have a more than a slight effect on interstate commerce. The jurisdictional standards are summarized in the rule, but generally speaking the NLRB will assert jurisdiction over retail businesses which that have a gross annual volume of business of \$500,000 or more.

The nonretail standard applies to most other employers. It is based either on the amount of goods sold or services provided by the employer out of state

(called "outflow") or goods or services purchased by the employer from out of state (called "inflow"). The Board will take jurisdiction over any employer with an annual inflow or outflow of at least \$50,000.

Outflow can be either direct—to out-of-state purchasers—or indirect—to purchasers that meet other jurisdictional standards. Inflow can also be direct—purchased directly from out of state—or indirect—purchased from sellers within the state that purchased them from out-of-state sellers.

Employers who think they qualify for the small business exclusion should consult an attorney before electing to ignore the new rule. Do not think that you are exempt from the posting requirements because your employees are not members of a union. Because NLRA rules ap-

ply to union and non-union workplaces, all employers subject to the Board's jurisdiction (aside from the United States Postal Service) will be required to post the notice.

At this time it is difficult to foresee what the consequences of a failure to comply will be. The NLRB does not have the power to fine an employer. However, 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, unions, employers or other persons. It does not initiate enforcement action on its own. 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 involving other alleged violations of the NLRA. The NLRB can seek injunctive relief and if there is a finding that employees' rights have been violated, it can seek compensation for the employees.

NLRA Basics

Basically, the new rule requires the employer to post a notice which informs all of its employees that under the NLRA, employees have the right to "Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment." Specifically, the Act is meant to enable employees to:

- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a

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THE NLRB WILL PROVIDE COPIES OF THE NEW NLRA NOTICE ON REQUEST AT NO COST TO THE EMPLOYER BEGINNING ON OR BEFORE NOVEMBER 1ST

contract with your employer setting your wages, benefits, hours, and other working conditions.

- Discuss 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.

The notice must also notify employees that under the NLRA, it is illegal for an employer to:

- Prohibit an employee 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.

- Question an employee about his or her union support or activities in a manner that discourages the employee from engaging in that activity.
- Fire, demote, or transfer an employee, or reduce his or her hours or change a shift, or otherwise take adverse action against the employee, or threaten to take any of these actions, because the employee joined or supported a union, or engaged in concerted activity for mutual aid and protection, or choose not to engage in any such activity.
- Threaten to close the 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 an employee 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.

The notice must also state that under the NLRA, it is illegal for a

union or for the union that represents the employees in bargaining with the employer to:

- Threaten or coerce an employee in order to gain your support for the union.
- Refuse to process a grievance because the employee criticized union officials or is not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against an employee because he or she has not joined or does not support the union.

The entire notice contains much more information. In some cases the information must be printed in multiple languages and the information must be posted on the employer's website or otherwise communicated electronically.

The NLRB will provide copies of the notice on request at no cost to the employer beginning on or before November 1, 2011. These can be obtained by contacting the NLRB at its headquarters or its regional, sub-regional, or resident offices. Employers can also download the notice from the Board's website <http://www.nlr.gov> and print it out in color or black-and-white on one 11-by-17-inch paper or two 8-by-11-inch papers taped together. Finally, employers can satisfy the rule by purchasing and posting a set of workplace posters from a commercial supplier. ■

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