

Employment Edge 128th Edition—NLRB Again Postpones Deadline for Posting Notice of Collective Bargaining Rights

January 4, 2013

April 30, 2012, is the new deadline for employers to post a Notice of Collective Bargaining Rights now required by a rule of the National Labor Relations Board (NLRB). We have previously written about the new NLRB rule requiring employers to post a notice of collective bargaining rights along with their other workplace postings. The NLRB had originally set a date in November, 2011, as the deadline for employers to get the new poster up, and then postponed that date to January 31, 2012, explaining that the delayed deadline was to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses, and to ensure broad voluntary compliance, because many private employers don't know whether the notice-posting requirement applies to them.

The National Labor Relations Board has agreed to postpone the effective date of its employee rights notice-posting rule at the request of the federal court in Washington, DC, that is hearing a legal challenge regarding the rule. Several federal lawsuits have been filed seeking to block implementation of the new rule, including suits by the National Association of Manufacturers (NAM) and the National Federation of Independent Business. NAM's suit asks the federal court to issue an order and judgment declaring that the NLRB exceeded its authority by promulgation of the posting rule. The Board's late December ruling states that the Board has determined that postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule.

Employers covered by the National Labor Relations Act (NLRA), which means both union and non-union employers who fall within the jurisdiction of the NLRB, and includes almost all private sector employers, must now post the Notice in their workplaces no later than April 30, 2012. The Notice may be printed in color or black-and-white. There is no penalty for posting the Notice earlier than the deadline.

Among the facts highlighted in the NLRB fact sheet is a reminder that federal labor law rights under the NLRA apply to union and non-union workplaces alike. Most significantly, the rights set out in the Notice include the rights of employees to "form, join, or assist labor" unions and to engage in "concerted activity" related to their employment. Concerted activity is a very broad concept under the labor law. Such activity occurs whenever two or more employees are acting together anywhere, in virtually any way, to communicate



with each other, their employer, or the public about workplace terms and conditions. The NLRB has made clear its position that protected concerted activity may occur over social media, and that employers violate the law and commit unfair labor practice if they interfere with such activity.

Meanwhile, employers who have questions or concerns about the Notice-posting requirement or about potential union activity in the workplace are invited to contact Mark S. Mathison (612.632.3247, mark.mathison@lathropgpm.com), or any other member of the GPM Employment & Labor practice group.

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