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New NLRB Rule Requires Employers To Post Notices Regarding Employee Rights Under the NLRA

On August 30, 2011, the National Labor Relations Board (**NLRB**) published a rule which will require covered employers for the first time to post an 11-by-17 inch notice that details employees' rights under the National Labor Relations Act (**NLRA**), including their right to organize. The rule takes effect on **November 14, 2011**, and covered employers must begin posting the notice on that date. Copies of the notice will be available on the NLRB website (www.nlrb.gov) and at NLRB regional offices by November 1, 2011.

Covered employers will be required to post the notice in "conspicuous places where they are readily seen," wherever employee rules or policies are customarily posted. The notice also will be required to be published on company internet and intranet sites that are customarily used to post company rules or policies. It will be an employer's duty to take reasonable steps to ensure the notice is not defaced and is readable.

The notice, which is entitled "Employee Rights Under the National Labor Relations Act" states that the NLRA "guarantees the right of employees to organize and bargain collectively with their employers." The NLRB's notice will summarize employees' rights under the NLRA, including their right to: (1) organize a union to negotiate with their employer regarding terms and conditions of employment; (2) form, join or assist a union; (3) bargain collectively; (4) discuss terms and conditions of employment, including wages and benefits, with co-workers or a union; (5) take action with one or more co-workers to improve working conditions, including raising work-related complaints with their employer or the government; (6) strike and picket; and (7) refrain from participating in union activity. The notice will also explain that it is illegal for an employer to: (1) prohibit talking about, or soliciting for, a union during non-work hours, or prohibit the distribution of union literature in non-work areas during non-work time; (2) discourage union participation; (3) fire, demote, transfer, reduce hours, change shifts or take other adverse employment action based on union activity or because an employee engaged in concerted activity or elected not to engage in any such activity; (4) threaten to close if the employees unionize; (5) offer promotions, raises or other benefits to discourage or encourage union support; (6) prohibit wearing union paraphernalia, except under special circumstances; and (7) conduct surveillance of peaceful union activities or pretend to do so. The notice will also include limited descriptions of unfair labor practices and NLRB enforcement procedures for unfair labor practice charges. The notice will include contact information for the NLRB, which would possibly facilitate employees filing unfair labor practice charges or petitions seeking union elections.

The NLRB's rule will require employers with 20% of their total workforce not proficient in English, and speaking another language, to post the notice in the employees' spoken language. If the workforce includes two or more groups totaling at least 20% of employees who are not proficient in English, and speaking different languages, the rule will require the notice to be posted in each language, or posted in the language spoken by the largest group with a copy of the notice provided to the employees of the smaller groups in their respective languages.

Penalties for Failure to Post

Employers failing to post the notice by November 14, 2011 may be subject to unfair labor practice charges. While employees normally have six months to file an unfair labor practice charge following the occurrence of the alleged unlawful conduct, the failure to post the notice may extend the limitations period.

Compliance with this notice rule is critical. Beyond the compliance issue, employers should be mindful of the rule's impact on union organizing activity in the workplace. If you or your company have any questions regarding this issue, please contact any member of the Honigman Labor Department listed on this alert.