



# *SBLC WEEKLY*

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## ***EMPLOYEES' RIGHTS POSTER***

The National Labor Relations Board (NLRB) has issued the final rule requiring employers to display a poster explaining to employees their labor relations' rights. The final rule takes effect 75 days after it is published in the Federal Register, which means it takes effect on November 14, 2011.

The posting requirement applies to all private-sector employers (including labor unions) subject to the National Labor Relations Act (NLRA), which excludes agricultural, railroad and airline employers. Even if there is no union in your workplace you still have to post the notice. The NLRB has a long standing policy that it "chooses" 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 NLRB's general jurisdictional standards are summarized in the rule and some of them are industry specific. The two most notable "size exemptions" are:

- The retail standard which applies to employers in retail businesses, including home construction. As the NLRB expresses it, the NLRB

will not "take" jurisdiction over any such employer that has a gross annual volume of business of less than \$500,000.

- The nonretail standard which 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 NLRB will not "take" jurisdiction over any employer with an annual inflow or outflow of at less than \$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.

Among those industries with a specific "size exemption" from NLRB jurisdiction are: Amusement industry; Apartment houses, condominiums, cooperatives; Architects; Art museums, cultural centers, libraries; Bandleaders; Cemeteries; Colleges, universities, other private schools; Communications (radio, TV, cable,

telephone, telegraph); Credit unions; Day care centers; Gaming industry; Health care institutions such as nursing homes, visiting nurses associations, hospitals, blood banks, other health care facilities (including doctors' and dentists' offices); Hotels and motels; Instrumentalities of interstate commerce; Labor organizations (as employers); Law firms, legal service organizations; Newspapers (with interstate contacts); Nonprofit charitable institutions (depending on the entity's substantive purpose); Office buildings, shopping centers; Private clubs; Public utilities; Restaurants; Social services organizations; Symphony orchestras; Taxicabs; and Transit systems.

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 will also be able to download the notice from the NLRB's website and print it out in color or black-and-white on a minimum size of one 11-by-17-inch paper or two 8-by-11-inch papers in landscape format taped together. (Yep, the NLRB actually said that.)

Employers can also satisfy the rule by purchasing and posting a set of workplace posters from a commercial supplier.

In addition to the physical posting, the rule requires every covered employer to post the notice on an internet or intranet site if personnel rules and policies are customarily posted there. Employers are not required to distribute the posting by email, Twitter or other electronic means.

The notice must be posted in English and in another language if at least 20 percent of employees are not proficient in English and speak the other language. The NLRB will provide translations of the notice, and of the required link to the NLRB's website, in the appropriate languages.

The rule has no record-keeping or reporting requirements. Failure to post the notice may be treated as an unfair labor practice under the NLRA. The NLRB investigates allegations of unfair labor practices made by employees, unions, employers, or other persons, but does not initiate enforcement action on its own. The NLRB has said "it expects that, in most cases, employers who fail to post the notice are unaware of the rule and will comply when requested by a NLRB agent. In such cases, the unfair labor practice case will typically be closed without further action. The NLRB also may extend the 6-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer. 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 does not have the authority to levy fines.

Issuance of the final rule comes as no surprise as the term of Chair of the NLRB came to an end over the week-end. The Democrats still have a majority on the Board, but one of the other majority terms will expire at the end of the year so additional final rules can be expected before then.

What is in the poster? Attached is the text (I set it up in landscape as the NLRB suggests to see what it would look like for those of us who do not have 11x17 printers).

The poster includes statements such as the following.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your 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.

Under the NLRA, it is illegal for your employer to:

- Prohibit you 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 you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your 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 you 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.