

Law Office of Bert N. Bisgyer

ATTORNEYS AT LAW
SUITE 525 EAST
1025 THOMAS JEFFERSON STREET, NW
WASHINGTON, D.C. 20007

Telephone 202-338-2172
Facsimile 202-338-2447
E-mail: bbisgyer@bisgyerlaw.com
www.bisgyerlaw.com

Of Counsel Carl S. Silverman

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Re: National Labor Relations Board Imposes Notice Posting Requirement

The National Labor Relations Board (NLRB) has issued a directive that, as of January 31, 2012, its new NLRB Notice must be posted in a “conspicuous place” in all private sector workplaces within the NLRB’s jurisdiction. This includes both for-profit and non-profit employers.

Rationale. The Obama Administration’s justification for this new burden on virtually all U.S. employers is that “many employees protected by the National Labor Relations Act (NLRA) are unaware of their rights under the statute, and that the rule will increase knowledge of the NLRA among employees in order to better enable the exercise of rights under the statute.”

Content of the Notice. No less than fourteen employee “rights” and protections are included in the poster, including the “rights” to “strike” and “picket.” All employees are also to be informed that they now may: “organize a union to negotiate with [their employer] concerning...wages, hours, and other terms and conditions of employment; form, join or assist a union; [and] bargain collectively through representatives of [their] own choosing for a contract...setting [their] wages, benefits, hours, and other working conditions...” It is noteworthy, however, that the Notice fails, for example, to mention the “right” of employees in right-to-work states to refrain from union membership or other statutory restrictions on union conduct. In effect, the NLRB poster provides a less than balanced review of the NLRA, and invites employees to unionize.

Posting Requirements. The posting requirements are specified in minute detail as to form, size, location, typeface, content, and implementation. Electronic posting also may be required if the employer typically posts its HR rules and policies on an intranet or internet site.

Responding to Employee Inquiries. While the NLRB Notice may appear to be self-evident, each employer is advised to carefully review its own circumstances and consider what may lawfully be done to protect its own workplace and options. Since employees will be receiving this Notice for the first time, they may be expected to ask their employer such questions as whether the employer now supports unionization or whether striking or picketing to protest employer actions has become permissible. Employees may also seek to question the commonplace employer admonition that an employee’s salary is “confidential,” and not to be discussed with co-workers, because the NLRB Notice contradicts that information. Employers should be prepared to lawfully respond to any such inquiries that may be posed.

Going Forward. Employers should understand how to fully comply with the NLRB Notice posting requirement, their ongoing obligations in that regard, the adverse consequences of non-posting, and the NLRB's enforcement prerogatives.