



Human Resources

by William D. Frye, Ph.D., CHE

Employers must display a new Employees' Rights poster at workplace

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On August 30, 2011, the National Labor Relations Board (NLRB) issued a final rule that would require every U.S. employer subject to the National Labor Relations Act (NLRA) to display a new employees' rights poster in their workplace. The poster must contain a select list of employee rights under the NLRA and must be posted by November 14, 2011. However, as indicated below, this posting date has been moved back to January 31, 2012.

About the Notice

More specifically, the final rule requires every employer subject to the NLRA to post a notice at least 11 x 17 inches in size in all workplaces regarding employee rights under the NLRA. Such poster must include an extensive set of employee rights under the act, including the following:

- To organize a union to negotiate with the employer on wages, hours, and other terms and conditions of employment
- To form, join, or assist a union
- To bargain collectively through employee-chosen representatives for a contract setting wages, hours, benefits, and other working conditions
- To discuss wages and benefits and other terms and conditions of employment or union organizing co-workers or a union
- To act with one or more co-workers to, among other things, raise work-related complaints to employers or a government agency
- To strike and picket
- To refrain from engaging in any of these activities
- To file NLRB charges and how to do so

The required Notice lists a number of employer practices that would be deemed unlawful under the NLRA, such as threatening employees who engage in protected activity.

Posting the Notice

The poster must be placed in the same locations where an employer posts other employee notices. If an employer posts employee rules and policies on an intranet or the Internet, the employer must also post this notice there or post a link to the NLRB's web site, which must read, "Employee Rights under the National Labor Relations Act".



The poster must be written in English, but if 20% or more of the employees predominantly speaks a foreign language, a second poster in that language also is required. If there are more groups that comprise 20% or more employees at a workplace that predominately speak an additional foreign language, then the poster must either be posted for the additional languages or given to such employees. The NLRB will supply foreign language posters upon request.

Who must post the Notice?

The posting requirement applies to all private-sector employers within the NLRB's jurisdiction. This includes most private-sector employers, including labor unions, but excludes agricultural, railroad and airline employers, as well as very small employers that conduct an insufficient volume of business to have more than a slight effect on interstate commerce. All hotels and motels that generate at least \$500,000 per year gross revenue are subject to this posting requirement.

The NLRB has posted a basic fact sheet to answer general questions regarding the rule and has provided the final text of the notice.

What hoteliers should do

Hoteliers should ensure they are in compliance with the new rule on or before January 31, 2012 by posting the required information as mandated by the NLRB.

Employers may download the 11" x 17" poster or the poster in two 8½" x 11" sheets from the NLRB website at www.nlr.gov/poster and print it on a single 11" x 17" paper or two 8" x 11" papers taped together. Free copies of the poster are also available on request from any of the 52 NLRB regional offices. Finally, employers can satisfy the rule by purchasing and posting a set of workplace posters from a commercial supplier. Included in this issue of TRC is an English and Spanish poster, suitable for posting.

The rule noted in response to comments that employers have the option of posting their own notice (in addition to the NLRB's notice) stating their position, as long as it does not contain threat[s] of reprisal or force or promise[s] of benefits. However, employers should be cautioned that posting their own Notice, or even a Notice informing employees of their rights under the U.S. Supreme Court decision in *Communication Workers v. Beck*, could result in the NLRB finding that the posting is a labor law violation as an inducement, by the employer, for employees to withdraw support from a union.

The rule notes that failure to post the Notice will be considered an unfair labor practice violation of the NLRA; however, the NLRB does not have the authority to levy fines. In addition, the NLRB may extend the six-month statute of limitations for filing a charge when the case involves other unfair labor practices. If an employer is found to knowingly and willfully refuse to comply with the posting requirements, it could be used as evidence of unlawful motive in other unfair labor practice cases.

Why the change in posting date?

Following lawsuits filed by the AH&LA through the Coalition for Democratic Workplace and several other organizations, the NLRB has postponed the new effective posting date for the Notification of Employee Rights requirement until January 31, 2012, from the initial date of November 14, 2011. The decision to extend the rollout period followed queries from businesses and trade organizations indicating uncertainty about which businesses fall under the NLRB's jurisdiction, and was made in the interest of ensuring broad voluntary compliance.

The Complaint Corner

- Unhappy Guests: (...calling the front desk after returning to their stayover guestroom from a long day of sightseeing...) "We just returned back to our guestroom and it was not cleaned today by Housekeeping. What happened?"
- Bad Reply: "You probably left the Do Not Disturb sign of the door, so Housekeeping chose not to clean your room."
- Slightly Better: "Housekeeping was really busy today because there were so many check-outs. If you were still in your room when the room attendant came by she may have decided not to disturb you."
- Best Reply: "I am very sorry Ms. Unhappy Guest that your room was not serviced. Please allow me to send two employees to your room now to freshen it up and provide some fresh bath linens and toiletries. They can be there in just a few minutes. "

The NLRB states that it chose to postpone the implementation date for its new notice-posting rule by more than two months in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses. However, aside from the new posting date, no other changes in the rule, or in the form or content of the Notice, will be made.

AH&LA responds

AH&LA has been working with members of Congress to explain the dangerous implications of the recent NLRB decisions. In response, House Committee on Education and the Workforce Chairman John Kline (R-MN) introduced the “Workforce Democracy and Fairness Act” which would ensure that employers have a voice and all employees are able to participate in a fair union election process. Specifically, the bill:

- Ensures employers are able to participate in a fair union election process. The legislation provides employers at least 14 days to prepare their case to present before a NLRB election officer and an opportunity to raise additional concerns throughout the election hearing.
- Guarantees workers have the ability to make a fully informed decision in a union election. No union election will be held in less than 35 days, giving workers a chance to hear both sides of the debate. Important issues that can determine how a worker votes will be decided before ballots are cast.
- Reinstates the traditional standard for determining which employees will vote in the union election, restoring a standard that was developed through years of careful consideration and Congressional guidance.
- Protects workers’ privacy by empowering workers to choose the type of personal contact information that is provided to the union.

To learn more about this effort and the “Workforce Democracy and Fairness Act” visit the Coalition for a Democratic Workplace website at <http://myprivateballot.com>. A breakdown of the NLRB Poster Rule, including directions on what hoteliers need to do in advance of the deadline, can be found on AH&LA’s website at www.ahla.com/content.aspx?id=33153. For more information, contact AH&LA’s Senior Vice President for Governmental Affairs Shawn McBurney at (202) 289-3123 or via e-mail at: smcburney@ahla.com ✧

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