

March 4, 2011

On December 22, 2010, the National Labor Relations Board ("NLRB"), an independent federal agency vested with the power to safeguard employees' rights to organize and to prevent and remedy unfair labor practices, published a proposed rule which, if enacted, would require every employer subject to the National Labor Relations Act ("NLRA") to post a notice informing employees of their rights under this federal labor law. The NLRA applies to most private-sector workplaces, whether or not employees are represented by a labor organization.

Under the proposed rule, employers would be required to post an 11-by-17 inch notice to employees of their rights to act together to improve wages and working conditions, form or join a union, bargain collectively, or choose not to take part in any of these activities. The notice would also provide examples of unlawful employer and union conduct, and would inform workers how to contact the NLRB with questions or complaints. Employers would also be required to distribute the notice electronically if the employer customarily communicates with employees by such means. Under the proposed rule, employers with "significant numbers" of employees who lack proficiency in English would be required to post notices in the languages spoken by the workers. Employers would be able to download copies of the required notice from the NLRB's website.

According to the NLRB, the purpose of the proposed rule is "to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions." Similar notice postings are already required under many federal employment statutes, including the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, and the Family and Medical Leave Act.

Under the proposed rule, employers who fail to post the required notice could be subject to the following penalties: (1) treating the failure to post the notice as an unfair labor practice; (2) tolling the NLRA's six month statute of limitations on the filing of an unfair labor practice; and (3) treating a knowing failure to post the notice as evidence of unlawful motive in unfair labor practice cases where motive is an issue.

The NLRB has requested comments on the proposed rule. Members of the public were given until the end of February 2011 to comment on the proposal, which comments the NLRB will review and consider before publishing the regulation in final form. Employers are not required to post the notice until the NLRB issues a final rule requiring a notice posting.

If you would like to discuss these issues further or have questions about this *Alert*, please contact one of the attorneys listed above.

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Key Contacts

Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Michael Sheetz Boston	msheetz@cooley.com +1 617 937 2330

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