CLIENT ALERTS & INSIGHTS

NLRB Proposed Rule Requires Posting of NLRA Rights

OCTOBER 30, 2023

Under the proposed rule submitted to the *Federal Register* and published for public comment this week, every employer under the National Labor Relations Board's jurisdiction would be required to post an educational notice informing employees of their rights under the National Labor Relations Act. This marks the first time in the 75 year history of the NLRA that such a requirement has been proposed.

The NLRB's proposed notice would inform employees of their right to act together to address their wages and working conditions, to form, join, and assist a union, to bargain collectively, or alternatively, to choose not to do any of these things. This proposed notice will also provide examples of unlawful employer and union conduct and will also instruct employees on how to contact the NLRB with questions or complaints.

Under the proposed rule, employers will be required to physically post this notice in a conspicuous place, including those places where "notices to employees are customarily posted." Furthermore, employers who customarily communicate with employees electronically will also be required to email the notice or prominently post the notice on the employer's website or intranet site. If a significant number of employees are not proficient in English, the employer will also be required to provide the notice in the employees' first language. Interestingly, the Board specifically declined to include a notice of employees' rights under the Supreme Court case *Communication Workers v. Beck*, permitting an employee to object to the use of his dues money for purposes not directly related to collective bargaining.

The Board has proposed this rule reasoning that "many employees protected by the NLRA are unaware of their rights under the statute." The Board attributes this to the fact that most private sector employees are not represented by unions and the fact that the increasing proportion of immigrants in the national work force are unlikely to be familiar with their rights. The Board believes that the workplace is the most appropriate place to communicate with employees about their rights and through this rule, seeks to better enable employees to exercise their rights and to "promote statutory compliance by employers and unions."

This proposed rule, especially when considered in conjunction with the General Counsel directive issued earlier this week, suggests that further significant changes are coming from the NLRB. The General Counsel directive, Memorandum GC 11-01, issued on December 20, 2010, requires NLRB regional offices to more frequently exercise their right to seek injunctive relief to remedy alleged unfair labor practices committed during the course of an initial union organizing campaign while the final resolution of those claims remain pending. The memorandum authorizes regional offices, when seeking temporary restraining orders from the federal courts, to include such remedies as allowing

unions to access bulletin boards and requiring the employer to provide unions with employee names and addresses.

All of this change will likely make union organizing easier. We will keep you informed of new developments and important changes to the law as they occur.

In that respect, we note that Board Member Brian Hayes dissented from the issuance of this proposed rule, stating that "the Board lacks authority to promulgate or enforce the type of rule which the petitions contemplated and which the proposed rule makes explicit." Public comment on any aspect of the proposed rule, including the issue of the Board's authority raised by Member Brian Hayes, is open for 60 days, until February 22, 2011. If you have any questions on the proposed rule or if you would like to discuss options for opposing the rule, please contact any of the following members of Benesch's Labor & Employment Practice Group:

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