

December 27, 2010

## LABOR & EMPLOYMENT UPDATE

### NATIONAL LABOR RELATIONS BOARD PROPOSES POSTING REQUIREMENTS:

As noted in Murtha Cullina's December 17, 2010 E-Alert (<http://www.murthalaw.com/publications/841-the-obama-board-starts-its-work-national-labor-relations-board-issues>) the National Labor Relations Board ("NLRB") is expected to act in a significantly more activist, pro-Union manner than has been its recent custom. On December 21, 2010, the Board verified this expectation by proposing a new rule that would require nearly all private sector employers to post notices informing employees of their rights under the National Labor Relations Act. While this proposal may or may not become effective, it is another step indicating that the current NLRB will be very friendly to Unions and issues Unions believe are important.

While most federal employment statutes -- from wage and hour laws to anti-discrimination laws to laws concerning leaves of absence -- provide some form of mandatory posting by employers, the National Labor Relations Act ("NLRA") does not. 75 years after the NLRA was enacted, the NLRB has now decided that it should remedy that Congressional oversight through a regulation requiring all private sector employers -- with very few exceptions -- to post an 11" x 17" paper informing employees of their rights under the NLRA. Among these rights are the right to join a union, to engage in organizational activity, to discuss terms and conditions of employment with co-workers and to take action with other employees to attempt to address workplace concerns.

If the proposal does successfully go through the rule-making process and become a full-fledged regulation, employers will be required to put this posting up in the same places that other employment notices are posted (that area is already pretty crowded). Federal contractors who have entered into contracts since January 30, 2009 already have an obligation to make such a posting under Executive Order 13496. There have been few, if any, reports of such postings resulting in workplace disruptions of any kind.

In its proposed rule, however, the NLRB does seem to have overstepped its bounds somewhat, as pointed out by a dissenting statement issued by one of the Board



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If you have any questions about the issues addressed here, or any other matters involving Labor & Employment law issues, please feel free to contact:

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members. The proposed rule attempts to extend the six month period within which a party may file an unfair labor practice charge if the employer is not in compliance with the posting rule, which will undoubtedly be challenged if it remains in the final rule. The proposal also makes failure to make such a posting an independent unfair labor practice, which at first blush also seems beyond the scope of the Board's authority.

The effect of such a posting, if it is required by law is, of course, unknown. If the posting is read by employees it may spark discussion among employees about the relative advantages and disadvantages of unionization. Also, if the posting requirement becomes law, employers may find it worthwhile to educate supervisors as to the requirements of the NLRA so that they may respond lawfully and appropriately if they become involved in discussions with employees. By itself, the posting may not radically alter the organizing behavior or success of labor unions. The current NLRB however, seems determined to alter the overall landscape in favor of unions and union organizing. This proposed rule, combined with other rules and decisions expected in the near future, may do just that.

The complete notice of proposed rulemaking is available here: [http://www.nlrb.gov/About\\_Us/news\\_room/Notice\\_for\\_Rulemaking/2010-32019\\_PI.pdf](http://www.nlrb.gov/About_Us/news_room/Notice_for_Rulemaking/2010-32019_PI.pdf)

If you have any questions on these issues, please contact Hugh F. Murray, III at 860.240.6077 / [hmurray@murthalaw.com](mailto:hmurray@murthalaw.com).

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