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NLRB POSTING DEADLINE EXTENDED UNTIL JANUARY 31, 2012

The NLRB has delayed the deadline for employers to post a new controversial notice to their employees informing them of their rights, including the right to organize, under the National Labor Relations Act ("NLRA"). Previously, the deadline for posting this notice was November 15, 2011, but amidst employer confusion, the National Labor Relations Board ("NLRB") pushed the deadline back to January 31, 2012.

All private employers, including labor unions, must post the prescribed NLRB notice. The only employers exempt from this new rule are agricultural employers, those employers covered under the Railway Labor Act (such as railroads and airlines) and the U.S. Postal Service. It is important to note that this new rule affects all non-exempt employers whether or not that employer's workforce is unionized.

In addition to the above exempt employers, certain small businesses are also exempt from this rule. Such exemptions are based on a small business' annual sales volume by industry, ranging from $50,000 to $1,000,000 in annual sales volume. Do not assume you are exempt from this rule based on the size of your business until you verify the exact NLRB exemption limits for your specific industry.

Under this new rule, all employers covered by the new rule will be required to post an 11×17 inch notice in a conspicuous place where all such employee notices are customarily posted. If your employees work at multiple locations, notice must be posted at each location. For instances where your employees work at a different company, you are required to post notice there as well—if that company will allow it.

A sample notice is available at no cost from the NLRB through its website, either by downloading and printing it or ordering it by mail. Translated versions are also available and must be posted at workplaces where at least 20% of employees are not proficient in English. Additionally, if an employer customarily posts notices to employees regarding personnel rules or policies on an internet or intranet site, that employer will be required to post the NLRB notice on those sites in addition to the physical posting of the notice in the workplace. There are no reporting or record-keeping requirements under this new rule.

Failure to post notice in accordance with this new rule may be treated as an unfair labor

practice under the NLRA and would expose an employer to a potential NLRB investigation. Penalties could range from the NLRB merely requiring that proper signage be posted; an extension of the normal 6 month statute of limitations for filing a charge involving other unfair labor practices; or even to the filing of an unfair labor practice charge against the employer.

If you have any questions about the new NLRB posting requirements, or if you need assistance in determining if your small business is exempt, please contact either Joseph E. Gumina or J.B. Koenings at O’Neil Cannon at 414-276-5000.