

## Why You Should Care About the NLRA

*What do union rules have to do with a non-union environment?*

Considering the number of articles floating around lately, it seems natural to conclude that the National Labor Relations Board (NLRB) is the only thing making headlines in the world of HR. It may be a stretch to make that statement, but if you didn't care about what the NLRB was doing before now, it's a critical time to start. By mid-November, virtually every employer will be required to add another poster to their wall of notices. The poster was released on September 14. A link is provided at the end of this document to access the poster.

The NLRB has been paying a lot of attention to non-union employers and employees as of late. By now, the news of Facebook firings has become a hot topic around water coolers everywhere. On August 30, the NLRB issued a final rule that requires any private-sector employer covered under the National Labor Relations Act (NLRA) to post a notice to its employees of their rights under the act. If there are 20% or more employees who are primarily non-English speaking, the notice must also be posted in the preferred language. If employers post other employee notices, such as those required by the Department of Labor (DOL), on the company's intranet or other site, the NLRB notice must be posted there as well. The notice must be posted regardless of current unionization status.

Although there is not a fine for non-compliance, your company could become ripe for an "unfair labor practice" charge if the notice is not posted. The failure to comply could be used as evidence in the event a case is brought against your company.

In spite of all the news about the new poster, you may still be surprised to learn that NLRA requirements are frequently applicable in non-union workplaces. A few examples to keep in mind are discussed below. Contact your attorney for more detailed information or guidance regarding specific situations.

### **Joint Employer-Employee Committees/Activities**

Many organizations seek to increase employee input and responsibility by establishing joint management-employee committees. However, the NLRB (National Labor Relations Board) has found some of these committees to be "employer assisted or dominated" labor organizations and therefore illegal (see the Electromation case). An employer is considered to "dominate" the committee if it designs and creates the committee, determines its function, and its ongoing existence is decided by the company. Employers therefore should be careful not to implement committees that make recommendations or that negotiate issues, such as terms of employment. Committees that simply gather information may be appropriate.

### **Policies Prohibiting Discussions Involving Wages**

Company policies that prohibit employee wage discussions may violate the NLRA, as they have been interpreted to unlawfully interfere with employees' rights to engage in organized and concerted activity.

### **Concerted Activity**

The NLRA provides employees the right to participate in “concerted activity” for collective bargaining or other mutual aid or protection. Therefore, a group of employees that complains to management regarding the terms and conditions of employment would be protected. Further, an employee who acts alone may also be protected if she acts on behalf of others.

### Use of Communication Systems

Employers have long been aware of the potential problems in allowing employees to use company bulletin boards for non-business communication, yet restricting union postings. The electronic workplace has raised similar issues regarding the use of email, the Internet, Facebook, voicemail, etc. The NLRA requires that rules regarding use of communication may not discriminate against union activities.

### Investigatory Interviews

In July 2011, the NLRB reversed itself yet again in *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 92 (7/10/2000). The new decision grants employees in non-union environments the right to have a coworker present during an investigatory interview if they have “reason to believe” the end result may be disciplinary action. Confused? You probably should be. The NLRB has reversed its own decision multiple times on this issue. Better stay tuned. Employers, however, are free to forego an interview with the employee rather than granting the request. They may, instead, continue the investigation and make the determination without the aid of the employee.

### NLRA Poster Required:

<https://www.nlrb.gov/poster>

### Notification of Employee Rights Under the NLRA (full text):

<http://www.federalregister.gov/articles/2011/08/30/2011-21724/notification-of-employee-rights-under-the-national-labor-relations-act>

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