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## Labor & Employment Client Service Group

To: Our Clients and Friends

August 31, 2011

### NLRB Final Rule On Employee Rights Notice Posting

Beginning in November, most U.S. private-sector employers will have to add yet another notice to the patchwork of government posters already hanging on their workplace bulletin boards, announcing to employees their rights under federal labor law. On August 25<sup>th</sup>, the National Labor Relations Board (“NLRB” or “Board”) issued a final rule requiring all employers subject to the Board’s jurisdiction<sup>1/</sup> to post a Board-published notice of rights under the National Labor Relations Act (“NLRA”). In addition to posting the 11x17-inch physical notice in “all places where notices to employees concerning personnel rules or policies are customarily posted,” the rule requires a covered employer to post the notice on its internet or intranet site if the employer customarily posts its personnel rules and policies there. Alternatively, an employer can provide a link, titled “Employee Rights under the National Labor Relations Act,” on its internet or intranet site, leading to the Board’s website where the notice is located.

The employee notice must be posted in conspicuous places where they are readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted. Where 20 percent or more of an employer’s workforce is not proficient in English, and speaks a language other than English, the employer must post the notice in the language the employees speak. If an employer’s workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must either physically post the notice in each of those languages or, at the employer’s option, post the notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the notice in the appropriate language. If an employer requests from the Board a notice in a language in which it is not available, the requesting employer will not be liable for non-compliance with the rule until the notice becomes available in that language. An employer must take reasonable steps to ensure that the notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable.

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<sup>1/</sup> Employers subject to the Board’s jurisdiction include most private-sector employers located in the fifty states which comprise the United States and the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, Saipan and Guam.

A poster with the required employee notice, including a poster with the employee notice translated into languages other than English, will be printed by the Board, and may be obtained from the Board's office, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570, or from any of the Board's regional, subregional, or resident offices. Addresses and telephone numbers of those offices may be found on the Board's Web site at <http://www.nlr.gov>. A copy of the poster in English and in languages other than English may also be downloaded from the Board's Web site at <http://www.nlr.gov>. Employers also may reproduce and use copies of the Board's official poster, provided that the copies duplicate the official poster in size, content, format, and size and style of type. In addition, employers may use commercial services to provide the employee notice poster consolidated onto one poster with other Federally mandated labor and employment notices, so long as the consolidation does not alter the size, content, format, or size and style of type of the poster provided by the Board.

Unlike many federal employment laws, the NLRA contains no mention of a posting requirement of the sort now required by the Board's new rule. In light of the absence of express statutory authority for the rule, legal challenges to its enforceability are expected. Indeed, in a blistering dissent, Board Member Brian Hayes predicted that a reviewing court would soon "save the Board from itself" and charged that the Board had acted in excess of its authority and in a manner that is clearly designed to "reverse the steady downward trend in union density among private sector employees."

While the Board acknowledges that it lacks authority to levy fines against an employer that fails to comply with the new posting rule, it has warned that the failure to post the required notice will be treated as an independent violation of the NLRA. Furthermore, the Board has indicated that non-compliance with the posting rule will likely result in the Board choosing to extend the six-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer. Finally, the Board has indicated that the failure to post the notice may be considered evidence of an employer's unlawful anti-union motive in an unfair labor practice case involving other alleged violations of the NLRA.

The Board's new rule takes effect on November 14, 2011. Leading up to that date, employers should consult counsel to plan for compliance and to determine what additional measures should be taken to protect their interests in light of the new rule.

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For additional information on this topic, please contact a member of Bryan Cave LLP's [Labor and Employment Client Service Group](#).