



## DELAYED DEADLINE FOR POSTING "UNION RIGHTS" POSTER PROVIDES OPPORTUNITY FOR UNION AVOIDANCE

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Earlier this year, the National Labor Relations Board ("NLRB") enacted a controversial rule requiring nearly all private employers to post an 11 by 17 inch "Union Rights" poster in their workplaces, regardless of whether the employer is currently unionized. The poster advises employees of their legal rights to organize as a union and protections afforded to them under the National Labor Relations Act ("NLRA"). According to the NLRB, the new poster is the best way to educate employees of their rights and protections to organize as a union, but critics charge that the poster is, in reality, an effort to cause more employees to unionize.

The initial deadline for posting the Union Rights poster (November 14, 2011) was recently extended to January 31, 2012.

The Union Rights poster will be a significant change in the workplaces of nonunion employers. If you are one of these employers, the posting extension provides an opportunity to take additional steps to bolster your tools for remaining union free. The following should be strongly considered before the January 31 deadline:

- 1. Do Not Post the New Posters Until the Deadline.** There is no reason to post the Union Rights poster prior to January 31, 2012. Delaying can be beneficial in several respects. First, it can enable your organization to implement additional union-free procedures prior to posting the Union Rights information. Second, there are legal challenges pending against the posting rule. It is possible that a court may enjoin the NLRB from enforcing the rule. Third, it is possible that the NLRB may provide additional extensions or may modify the rule or the language of the poster. (Employers who subscribe to "auto-update" services from workplace poster vendors should request those vendors to refrain from issuing new posters at this time.)
- 2. Update Personnel Policies.** An important tool for remaining union free is the Employee Personnel Policy Manual. Employers should ensure that there is a persuasive union-free message, as well as up-to-date policies relating to potential organizing efforts, such as non solicitation, non-distribution, use of bulletin boards, visitors, trespassing, social media use, internet use, harassment, bullying and coercion, workplace violence, and similar policies. The NLRB has held that modifying such policies after a union organizing effort has begun can be evidence of improper interference with employees' organizing rights. In addition, there have been a number of recent court decisions interpreting the language of many of these policies and explaining what language is now permissible and impermissible. Many older policies could be viewed as unlawful under some of these new decisions.

- 3. Educate Employees on Advantages of Union-Free Status.** The extended deadline provides additional opportunities to educate employees on the benefits of a union-free workplace, which is perhaps the most effective means of combating a union organization drive. For example, explaining why approximately 93% of employees of private employers have elected not to organize as a union, disclosing information regarding the average annual cost of union dues, and sharing other information which union organizers do not provide to employees are very useful means of avoiding an expensive organizing campaign. Such educational meetings can also be an effective team-building exercise, particularly when the moderator is well trained in facilitating an open discussion. The most compelling educational experiences are designed so employees do not feel they are being lectured to, but, instead, are being invited to participate in the process and respected for their contributions and dedication.
- 4. Update Training to Supervisors.** The extended deadline also provides additional time to train or retrain supervisors on the legal rules relating to union organizing efforts and practical suggestions during the process. These include “do’s” and “don’ts” to minimize potential legal claims, methods for early identification of union organizing activities, a review of personnel policies relating to organizing efforts, and appropriate steps for preventing coercion of employees by union organizers.
- 5. Post “Employer Rebuttal Posters.”** Nothing prohibits employers from posting their own informational posters in their workplaces, provided that the information is truthful and does not undermine or interfere with employees’ rights. For example, employers are free to post their corporate union-free philosophy, additional information on employees’ rights not to organize, information on how to prevent improper coercion from unions, and other topics.

In conjunction with the new posters, the NLRB is also working on proposed rules to shorten the time period between the filing of a union election petition and the election. Shortening this time period will significantly reduce an employer’s ability to campaign to its employees after a union petition is filed. As a result, proactive steps become even more important in maintaining union-free status.

Additional information on the new NLRB Union Rights poster, sample personnel policies, sample employee and supervisor educational materials, and advice and training on labor-related topics can be obtained from the Employment Law Team at Liebmann, Conway, Olejniczak & Jerry, S.C.