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"The National Labor Relations Board Requires Your Company to Post the Roadmap for Your Employees to Become Union"

Employment Law Workshop

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CONSTANGY
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CLIENT BULLETIN

Client Bulletin #444

A PARTING GIFT FROM THE LIEBMAN BOARD: Employers Must Post Notice of Organizing Rights Starting November 14

By Kim Seten
Kansas City Office

As a parting "gift" for employers during Wilma Liebman's last days as Chair, the National Labor Relations Board announced its final rule on Notification of Employee Rights under the National Labor Relations Act. The rule passed the Board by a 3-1 vote, with Member Brian Hayes dissenting. The rule will take effect on November 14, 2011, 75 days from the date of its publication in the *Federal Register*.

The rule mandates that employers covered by the NLRA (which includes non-union employers) must post a notice to employees informing them of their right to act together to improve wages and working conditions, to form and join a union, to bargain collectively, or to choose not to do any of these things. Employers can request copies of the notice from the NLRB or download them from the **NLRB's website**. Downloaded copies must be printed on 11x17-inch paper but can be printed in black and white. Employers also can use a commercial poster service as long as the notice maintains the same size, color, and content. The NLRB says that copies of the notice will be available by November 1.

According to the rule, the notice must be posted in conspicuous places, including all places where notices to employees are customarily posted. The employer must take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise rendered unreadable.

Employers who maintain internet or intranet sites where they "customarily" post or communicate personnel rules or policies to employees must post the notice electronically as well. The employer can either post the actual notice or provide a link to the notice on the NLRB's website.

Employers also must provide non-English-speaking employees with a language-specific copy of the notice if that employee group constitutes as least 20 percent of the employer's workforce. Employers can meet this obligation by providing the notice to the individual employees or posting the notice in the required languages. Employers can obtain translated notices from the NLRB and can request that the NLRB translate the notice into languages not already available.

Most significant for employers are the repercussions if an employer *does not* post

the notice. The rule imposes three possible penalties for an employer's failure to post the notice. First, an unfair labor practice charge may result, although the rule clarifies that in the majority of circumstances, the unfair labor practice will be closed and not pursued further if the employer was unaware of the rule and posts the notice when requested. Second, failing to post the notice could lead to a tolling (delay) of the six-month statute of limitations for the filing of unfair labor practice charges. Third, an employer's knowing and willful failure to post the notice could be used as evidence of unlawful motive in a separate unfair labor practice charge.

Government contractors and subcontractors who are already posting the Department of Labor notice required by **Executive Order 13496** do not have post the NLRB's notice because the language is the same.

In scant good news for employers, the final rule does not include the requirement that employers distribute the notice via email, voice mail, text message, or other electronic communication such as Twitter.

The rule also leaves open the possibility for an employer to post a separate notice on its stance regarding unions. The NLRB acknowledged an employer's right to "express views, arguments, and opinions" on unionization so long as the employer's expression "contains no threat of reprisal or force or promise of benefit." Before posting such a counter-notice, we recommend that you consult with your Constangy attorney of choice.

About Constangy, Brooks & Smith, LLP

Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A "Go To" Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 130 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit www.constangy.com.

Final Rule for Notification of Employee Rights

Background:

The National Labor Relations Board has issued a Final Rule [1]requiring most private-sector employers to notify employees of their rights under the National Labor Relations Act by posting a notice. The rule is scheduled to be posted in the Federal Register on August 30, 2011, and will take effect 75 days later.

Employers should begin posting the notice on November 14, 2011. Copies of the notice will be available on the NLRB website and from NLRB regional offices by November 1.

Similar postings of workplace rights are required under other federal workplace laws. The 11-by-17-inch notice is similar in content and design to a notice of NLRA rights that must be posted by federal contractors under a Department of Labor rule.

The notice of rights will be provided at no charge by NLRB regional offices [2] or can be downloaded from the Board website and printed in color or black-and-white. Translated versions will be available, and must be posted at workplaces where at least 20% of employees are not proficient in English.

Employers must also post the notice on an intranet or an internet site if personnel rules and policies are customarily posted there.

Questions and Answers:

Does my company have to post the notice?

The posting requirement applies to all private-sector employers (including labor unions) subject to the National Labor Relations Act, which excludes agricultural, railroad and airline employers. In response to comments received after the proposed rule was announced, the Board has agreed to exempt the U.S. Postal Service for the time being because of that organization's unique rules under the Act.

When will the notice posting be required?

The final rule takes effect 75 days after it is posted in the Federal Register, or on November 14, 2011.

There is no union in my workplace; will I still have to post the notice?

Yes. Because NLRA rights apply to union and non-union workplaces, all employers subject to the Board's jurisdiction (aside from the USPS) will be required to post the notice.

I am a federal contractor. Will I have to post the notice?

The Board's notice posting rule will apply to federal contractors, who already are required by the Department of Labor to post a similar notice of employee rights [3]. A contractor will be regarded as complying with the Board's notice posting rule if it posts the Department of Labor's notice.

I operate a small business. Will I have to post the Board's notice?

The rule applies to all employers subject to the Board's jurisdiction, other than the U.S. Postal Service. The Board has chosen not to assert its jurisdiction over very small employers whose annual volume of business is not large enough to have a more than a slight effect on interstate commerce. The jurisdictional standards are summarized in the rule.

How will I get the notice?

The Board will provide copies of the notice on request at no cost to the employer beginning on or before November 1, 2011. These can be obtained by contacting the NLRB at its headquarters or its regional, sub-regional, or resident offices. Employers can also download the notice from the Board's website and print it out in color or black-and-white on one 11-by-17-inch paper or two 8-by-11-inch papers taped together. Finally, employers can satisfy the rule by purchasing and posting a set of workplace posters from a commercial supplier.

What if I communicate with employees electronically?

In addition to the physical posting, the rule requires every covered employer to post the notice on an internet or intranet site if personnel rules and policies are customarily posted there. Employers are not required to distribute the posting by email, Twitter or other electronic means.

Many of my employees speak a language other than English. Will I still have to post the notice?

Yes. The notice must be posted in English and in another language if at least 20% of employees are not proficient in English and speak the other language. The Board will provide translations of the notice, and of the required link to the Board's website, in the appropriate languages.

Will I have to maintain records or submit reports under the Board's rule?

No, the rule has no record-keeping or reporting requirements.

How will the Board enforce the rule?

Failure to post the notice may be treated as an unfair labor practice under the National Labor Relations Act. The Board investigates allegations of unfair labor practices made by employees, unions, employers, or other persons, but does not initiate enforcement action on its own.

What will be the consequences for failing to post the notice?

The Board expects that, in most cases, employers who fail to post the notice are unaware of the rule and will comply when requested by a Board agent. In such cases, the unfair labor practice case will typically be closed without further action. The Board also may extend the 6-month statute of limitations for filing a charge involving other unfair labor practice allegations against the employer. If an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA.

Can an employer be fined for failing to post the notice?

No, the Board does not have the authority to levy fines.

Was there a public comment period? What was the response?

The Board received more than 7,000 public comments after posting a notice of the proposed rule in the Federal Register. A detailed description of the comments and the Board's response to them, including responsive modifications to the rule, may be found in the Preamble to the Final Rule. [4]

Source URL: https://www.nlrb.gov/news-media/fact-sheets/final-rule-notification-employee-rights

Links:
[1] http://www.federalregister.gov/articles/2011/08/30/2011-21724/notification-of-employee-rights-under-the-national-labor-relations-act
[2] https://www.nlrb.gov/who-we-are/regional-offices
[3] http://www.dol.gov/olms/regs/compliance/EO13496.htm
[4] http://www.ofr.gov/OFRUpload/OFRData/2011-21724_PI.pdf

Employee Rights

Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: **http://www.nlrb.gov.**

You can also contact the NLRB by calling toll-free: **1-866-667-NLRB (6572)** or **(TTY) 1-866-315-NLRB (1-866-315-6572)** for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

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*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

This is an official Government Notice and must not be defaced by anyone.

SEPTEMBER 2011

U.S. Chamber Sues NLRB to Block Notification Rule

Lawsuit Says Rule is an Unlawful Abuse of the Regulatory Process, and is Unconstitutional

WASHINGTON, D.C.—The U.S. Chamber of Commerce and the South Carolina Chamber of Commerce today filed a lawsuit against the National Labor Relations Board (NLRB) challenging the Board's new rule requiring businesses to post notices explaining employees' rights to unionize. The Chamber's lawsuit alleges that the misguided NLRB rule violates federal labor and regulatory laws as well as the First Amendment. The case, *Chamber of Commerce, et al. v. National Labor Relations Board, et al.* is in the U.S. District Court of South Carolina.

"The NLRB has no authority to impose any of these requirements," said Robin Conrad, executive vice president of the National Chamber Litigation Center, the Chamber's public policy law firm. "This is nothing more than labor regulation run amok. Adding insult to injury, the Board's new rule violates the First Amendment by forcing employers to use their own resources to post the NLRB's pro-union message on the company's own property."

The Chamber's lawsuit alleges that the NLRB's final rule regarding Notification of Employee Rights Under the National Labor Relations Act ("Notification Rule") violates the National Labor Relations Act (NLRA), the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA), and the First Amendment. Significantly, the rule creates a new "unfair labor practice," exposing businesses to significant and costly liability for failure to comply. The Rule -- which applies to virtually all private employers in the United States -- becomes effective on November 14, 2011.

"At a time when the private sector is striving to create desperately needed new jobs, it is disappointing to see that the NLRB is imposing new and unnecessary regulations on employers," said Randy Johnson, the Chamber's senior vice president for Labor, Immigration, and Employee Benefits. "The latest rule is part of the NLRB's pattern of tipping the scale in favor of unions, at the expense of employers and employees alike."

According to the Chamber's lawsuit:

- Nowhere does the NLRA give the NLRB authority to coerce employers to post such notifications, or to impose onerous penalties for those who fail to post the notices.
- In violation of the APA, the rule arbitrarily and capriciously excludes from the mandatory notice a description the fundamental rights of employees to be free of compulsory union membership and compulsory union dues.
- The NLRB violated the RFA by failing to properly assess the significant economic impact the rule would have on small businesses.
- The rule violates the First Amendment by compelling employers to post the NLRB's ideological views on unionizing.

Statement On Unions

Short Version

Our company has a continuous history of prosperous operations in the absence of any collective bargaining agreement with unions. Our position is that there is no need for unions at _____. In the final analysis, only through team effort, hard work, and cooperation can good job security, good pay, benefits, individual freedom, and job satisfaction be assured. We have made substantial progress in the past and are dedicated to continuous effort in making future progress. We believe we can better solve our problems of working together without an outside party.

Long Version

We appreciate the support of our employees and our customers and hereby reaffirm our commitment to treat employees with respect and dignity, as well as to provide an open line of communication to all levels of management. We believe any employee concerns can be best addressed through frank discussion in an atmosphere of mutual respect and cooperation, without the involvement of outsiders. We value employees as individuals and we want to be responsive to their concerns and issues.

We believe that unions do not serve any useful purpose, as their desire is to obtain union dues, fees, fines and assessments from employees through creating a perception that employees need representation. Unions typically do this by raising issues in the workplace which they purport to solve. Actually, unions have no such power. We believe problems are best solved by everyone working together. Under the law, the union has no power to make the Company do anything it does not feel is in its best interests. Rest assured, the Company is committed to providing its employees with job security and a bright future with the Company. Unions do not offer us any help in achieving this goal.

If anyone ever asks you to sign a union card or participate in any union activity, we want you to know that you have the legal right to refuse such attempts and to discuss any questions you may have with someone in management to be sure that you have all the facts on the subject.

Employee Rights (as outlined by the NLRB)

Under the National Labor Relations Act (NLRA), employees have the right:

- To self organize;
- To form, join or to assist labor organizations;
- To distribute or solicit support during non-working times and distribute union materials in non-working areas
- To discuss issues and voice opinions when on duty and in work areas, provided it is not disruptive to operations
- To bargain collectively through representatives of their own choosing;
- To act together for the purpose of collective bargaining or other mutual aid or protection;
- To refuse/refrain from any or all such activities;

Management Rights

Management has the right:

- To plan, control, staff and organize operations as you would do on a normal daily basis.
- To counsel and discipline employees when needed as long as it is consistent with policy and does not unjustly discriminate against an employee solely because of the employee's union activity;
- To talk to employees frankly about:
  - the benefits they already have without a union;
  - third party representation is not in the best interest of the employee or the company
  - disadvantages of a union, i.e. dues, fines, assessments, strikes, picket line duties, etc;
  - any experience you may have had with a union;
  - the union cannot force the company to agree to anything that is harmful to the welfare of the company;
- to correct any propaganda about or by the union that is untrue or misleading;

You Cannot As a Manager ...

T Threaten employees in any way to deter them from union activity. Management cannot threaten loss of jobs or benefits. In addition, employees cannot be fired for the sole purpose of discouraging union activity. This would be considered discriminatory

I Interrogate an employee about his/her union views, activities, voting. For example, employees cannot be asked how they will vote. They also cannot be asked about union meeting activities or who is involved in the union.

P Promise employees pay raises or new benefits or increase pay or benefits during a campaign to make the union less attractive. Management also cannot solicit grievances during this time period.

S Spy on employees concerning union activities. Management cannot attend union meetings or observe employees going into or coming from union meetings.

You Can and Should:

- Listen to what employees say.
- Treat union solicitation and other activity the same as you would treat other solicitation activity.
- Share your opinions with employees regarding past union experiences you may have encountered.
- Answer questions freely, openly and honestly
- Allow employees to communicate to each other about their views on the union as long as it is not disruptive and does not interrupt patient care.
- Management by walking around still works. (MBWA)
- Be available to answer employees' questions. If you do not know the answer, be truthful with the employees and tell them you will find out the answer and get back with them.
- Discuss the disadvantages of the union.
- Report what you see that is out of the ordinary to your manager and/or Human resources.
- Inform the employee of his/her rights. They have the right to sign a card and attend union meetings. They also have the right not to sign an authorization card, and not to attend meetings.
- State that the hospital management prefers that the hospital remain union free. The employees are free to support the union. However, it is desired they do not.
- Remind the employees of the "critical decision" they will be making if the election is held and how important it is for everyone to make an "informed" choice.
- Explain the 50% + 1 vote calculation.
- Remember the TIPS rules. Do not threaten, interrogate, promise or spy.
- Be prepared to refute any untruths in the union's propaganda.
- Inform the employees that signing an authorization card does not commit that person to vote for the union in the election. If an employee signed a card under pressure or just changed his/her mind and wants the card back, he/she may write to the union and NLRB and ask for the card to be returned.
- Discuss the benefits that the employees currently have.

If you need assistance in any of these areas, please contact your local or corporate Human Resources Department

Supervisors Guide To Union Organizing

Constangy, Brooks & Smith, LLP

Labor unions are becoming more active in their organizing efforts. This new activity is the direct result of several years wherein union membership and union revenues derived from dues have continually declined. Overall, several million members and hundreds of millions of dollars in revenue have been lost. As a result, all organizations, and are more of a target for unions than ever before.

The rights of employees to form or join labor organizations as well as their right to refrain from doing so is protected. Working with employees in a cooperative spirit does more to assure the best possible wages, benefits and working conditions than would a collective bargaining situation.

Professionally addressing union organization activity at an early stage provides a better chance of avoiding a full-blown organizing effort. The following material will be helpful and important to review on a regular basis along with regular communications with employees about their workplace concerns.

Union Activity Checklist

Warning Signs and Indications of Union Activity

These warning signs by themselves are not a sure indication that union organizers are at work. However, it would be a mistake to ignore any of them, no matter how insignificant they appear. Learn to recognize changes in behavior and routine and compare notes with other members of management.

Level I – Behavioral Changes	Yes	No
1. Have you observed any employee(s) getting an unusual amount of attention and conversation from other employees?	___	___
2. Have you observed employees moving about actively with other employees during break time, meal periods, or before and after their work shift?	___	___
3. Have you observed any employee(s) stops talking with another employee(s) when you approach them in their work area, break time, or at meal times?	___	___
4. Have you observed an employee(s) who was formerly friendly and cooperative becoming unfriendly and cooperative or "silent" when you talk with them?	___	___
5. Have you observed an employee(s) previously considered "quiet" or a "constant complainer" who now seems more "open" and cooperative?	___	___
6. Have you noticed any "new Leaders" speaking up during employee meetings with management who previously had little to say?	___	___
7. Has there been a recent increase in employee(s) questions about pay, policies, work rules, or employee benefits?	___	___
8. Have you observed any substantial increase or decrease in productivity of any employee or groups of employees?	___	___
9. Have you institute any recent policy changes resulting in "tightening down" on issues such as absenteeisin, tardiness, production, etc.?	___	___
10. Has the employee "grapevine" gone dead or does an unusual silence exist among employees?	___	___
11. Have you observed an increase in any employee(s) coming to work unusually early and talking with other employees before their shift begins?	___	___
12. Have you observed or heard of an employee(s) coming back on the premises after the shift to contact other employees inside or at the parking lot	___	___
13. Has any employee(s) recently attempted to provoke a supervisor, be uncooperative, or refuse to perform a job assignment?	___	___

Level I cont.	Yes	No
14. Has any recently discharged employee(s) been seen returning to the parking area or on the premises talking with other employees?	___	___
15. Have you noticed the presence of unfamiliar "strangers" at the beginning or end of the shift, talking with employees?	___	___
16. Has an employee(s) requested to have a fellow worker be present during a recent "disciplinary interview" with a supervisor or manager?	___	___
17. Has there been any increase in employee complaints or grievances dealing with "seniority", "job security", "fair treatment", etc.	___	___
18. Have you instituted any wage/benefit reductions or cost-containment measures recently or had complaints about increase?	___	___

Level II - Overt Actions	Yes	No
19. Have you observed any "anti-management" graffiti on bulletin boards or in restrooms?	___	___
20. Have you seen any printed materials such as union handbills, union authorization cards, or notices of union meetings circulated on the premises or posted on bulletin boards?	___	___
21. Have you seen any employee(s) writing down names of other workers from posted work schedules or lists?	___	___
22. Has any employee(s) reported being contacted at home by telephone or in person by a fellow employee "union pusher" or union organizer?	___	___
23. Have you observed any employee(s) wearing a "union button", cap, or tee shirt with a union logo?	___	___

Activity Level Indicator

Level I Three (3) or more items checked "yes" – concerted activity-open and prevalent-employee(s) vocal on issues-good assumption action may be motivated by union pushers or issues that could lead to union. Contact Human Resources immediately.

Level II One (1) or more items checked "yes" –overt union activity-union representative probably involved. Contact Human Resources

Internet Social Networking and Blogging Policy for Employees

Social media have become an extremely important communications channel. This technology, and the capabilities of the World Wide Web, blurs the line between personal and professional communications. While this creates new opportunities for communications and collaboration, it also creates new responsibilities for individuals. Posted material can, when matched with an identity or photograph, reflect not only on the individual, but also on that individual's employer, clients, associates and profession. When you participate in social networking or use social media, use common sense and good judgment when posting or sharing material. There may be consequences that can include, among other issues, negative publicity, regulatory attention and confidentiality or copyright concerns. This policy is not meant to infringe on your personal interaction or commentary online, inasmuch as it does not pertain to the Company or create a negative image for the Company, its employees, clients, vendors and other such parties.

You should also understand that any posted material will be available on the Internet indefinitely—it is virtually impossible to recall or permanently or completely delete material once posted. The overall goal of social media participation from a business perspective is one of adding value and providing worthwhile information and perspectives. the Company's brand is best represented by our people; what you post may reflect on our brand whether you intend for it to or not.

In general, the Company views social networking sites (e.g., MySpace, Facebook), personal Web sites, and Blogs positively and respects the right of employees to use them as a medium of self-expression. However, an employee who chooses to use such social networking site should not identify himself or herself as an employee of the Company of any of its affiliates on such Internet venues because some readers of such websites or blogs may view the employee as a representative or spokesperson of the Company or its affiliates or, depending on the content of the website or blog, may view the Company, its employees, and its affiliates negatively. In addition to the foregoing, the Company requires that employees observe the following guidelines:

1. Employees must be respectful in all communications and blogs. Employees should not use obscenities, profanity, or vulgar language.
2. Employees must not use blogs or personal websites to disparage the Company, its employees, its clients, vendors and other such parties.
3. Employees must not use blogs or personal websites to disclose any confidential information of the Company, its current, former or prospective clients, consumers, contacts, business partners, service recipients, vendors, its employees or its affiliates.
4. Employees must not use blogs or personal websites to harass, bully, or intimidate other employees. Behaviors that constitute harassment and bullying include, but are not limited to, comments that are derogatory with respect to age, race, religion, gender, sexual orientation, color, or disability; sexually suggestive, humiliating, or demeaning comments; and threats to stalk, haze, or physically injure another employee.

5. Employees must not use blogs or personal web sites to discuss engaging in conduct that is prohibited by Company policies and MERIT principles, including, but not limited to, the improper or illegal use of alcohol and drugs, sexual behavior and sexual harassment, and bullying.
6. Employees must not post pictures of employees, staff members, or clients, consumers, contacts, business partners, service recipients on a web site without obtaining written permission. Employees should be aware that pictures posted on a web site are often available for viewing by third parties and could be considered detrimental to the Company and its character and reputation and that of its employees.
7. The use of any copyrighted the Company name or logo is not allowed without written permission.

Any employee found to be in violation of any portion of this Social Networking and Blogging Policy will be subject to immediate disciplinary action, up to and including termination of employment.

[ADDITIONAL OPTIONAL LANGUAGE]

The Company requires that employees observe the following guidelines:

1) **You are responsible for what you post.** Even if your employment with the Company is not explicitly stated when using a social media site, your use of the site reflects on the Company. Represent yourself and the Company well. Be professional, respectful, discreet and authentic. Remember that you can't control what happens to your content once you hit "update." Employees and attorneys should not use obscenities, profanity, or vulgar language nor should they engage in threatening or racially/ethnically hateful behavior online or make defamatory or offensive statements under an identity that can be tied to your employment with the Company. This includes any posting under a screen name behind which is a profile – even if "private" – that includes your actual identity, whether or not that profile itself identifies you as an employee of the Company.

2) **For non-business participation on social media sites, you must use a personal e-mail address and must not attribute to or imply personal opinions or statements are endorsed or supported by the Company.** If you choose to list your work affiliation on a social network, then you should regard all communication on that network as you would in a professional network. Online lives are ultimately linked, whether or not you choose to mention the Company in your personal online networking activity. If you identify yourself as being affiliated with The Company, you must state that entries are your personal opinion and do not represent the position of the Company. If you extol the virtues of the Company on a social media site, you must identify yourself as having an affiliation with the Company.

3) **When participating in social networking sites in a professional context and when writing personal blogs, make an explicit statement that the views expressed by the author represent the author's alone and do not represent the views of the Company.** Write or speak in the first person to help identify that you speak for yourself and not the Company.

4) **Employees must not use social media to disparage the Company, its employees, clients, competitors or vendors.**

5) **Employees must not use social media to disclose any confidential or proprietary information of the Company or its clients, including financial information.** Honor the terms of your contracts with the Company and contracts we have with any client. Employees must at all times keep client matters confidential and must not discuss ANY client-related business via social media, from identification of clients to discussion of their matters. Employees should also refrain from commenting on the business or practices of any Company client. Any such discussion will be considered a serious violation of the Company's social media policy.

6) **Employees must not use social media to harass, bully or intimidate other employees.** Behaviors that constitute harassment and bullying include, but are not limited to, comments that are derogatory with respect to race, religion, gender, sexual orientation, color, or disability; sexually suggestive, humiliating, or demeaning comments; and threats to stalk, haze, or physically injure another employee.

7) **Employees must not use social media to discuss engaging in conduct that is prohibited by Company policies,** including, but not limited to, the improper or illegal use of alcohol and drugs, sexual behavior and sexual harassment and bullying.

8) Follow the rules of privacy/confidentiality.

9) **Employees should comply with any applicable state and federal, trademark, copyright and other intellectual property laws.** The use of any copyrighted Company name or logo is not allowed without written permission.

10) **Do not give advice or form client relationships when using social media.** The Company's standard intake procedures should be used to avoid conflict or other ethical problems.

11) **Employees must not post pictures of or comments made by employees or clients on a website without obtaining permission.** Employees should be aware that pictures posted on a web site are often available for viewing by third parties and could be considered detrimental to the Company and its character and reputation and that of its employees. Therefore, employees are cautioned to review their privacy settings on the various social media sites they use.

12) **Never be false and misleading in your online credentials.** Maintain complete accuracy in all online bios and ensure there is no embellishment. For example – a employee attends a conference at Harvard for a weekend and states in his/her bio - "Harvard trained" - this is inaccurate and noncompliant. Use the words "expert" or "specialized" very sparingly and only when such claims can be substantiated and are approved for usage by the appropriate association.

13) Follow the terms and conditions of use that have been established by each site or application used for your social networking activities.

14) **If a member of the news media contacts you about an Internet posting that concerns the Company's or a client's business, treat it as any other media inquiry, and do not respond to them directly.** Please refer that person to [_____] or [_____].

15) **If a negative post or comment is found online about the Company, a client or you in a business context, do not counter with another negative post.** You should seek assistance from the marketing department before forming a response, if one is warranted. If you are uncertain about any post on a social media site, contact the marketing department for additional guidance.

16) Violation of this policy **may result in disciplinary action** up to and including termination.

Personal Blogs

Employees should feel free to create and maintain their own personal blogs, keeping in mind the rules and guidelines contained in this policy. However, while a blog itself is not subject to state or federal regulations governing advertising for a product or service, the content of a blog can be. For any business-related blog, the content must be informative only, and nothing in the content should propose a commercial transaction or be for the purpose of directly gaining a commercial transaction. The threshold question to ask is – does the content articulate commercial speech (i.e., attempting to sell services) in any way? If so, it's likely that it will be subject to state rules.

If you have a personal blog that mentions your employment or have a blog that discusses industry issues, your personal blog must contain a disclaimer that all content is solely the personal opinion of the author and is not endorsed by the Company with the following language: *The information and opinions expressed herein are solely the work and opinion of the author, and do not represent the position of the Company.*

Company Social Media Accounts

The Company is currently expanding the use of social media for marketing purposes. These current and future accounts and profiles may include, but are not limited to blogs, LinkedIn, Twitter and Facebook. No employee may create a social media account on behalf of the Company, nor can they act on behalf of the Company through any online channels, including social media and social networking, without the express consent of the Company.

Company Blogs

Company blogs, as with all Company publications, are overseen or approved through the marketing department and/or the President of the Company. Employees are not permitted to make comments on Company blogs that disagree with the blog author's position or make posts that could be considered inappropriate or detrimental to the Company and its reputation. Comments are monitored, and the Company reserves the right to not publish any comment for any reason.

LinkedIn

Employees may and are encouraged to be active in their own personal LinkedIn accounts for personal and professional development reasons. However, only the marketing department may alter the Company's overall LinkedIn profile. If you have questions or concerns about the The Company LinkedIn profile, please contact _____.

If you are connected on LinkedIn to a Company employee who then leaves the Company for a competitor, it is wise to disconnect from that person after his or her departure so he or she no longer has LinkedIn access to your current clients, prospects and other connected contacts.

Twitter

The Company has reserved an overall Company Twitter account. Marketing is in control of tweets coming from this account, which is used for disseminating the Company and industry news, as well as for interacting with the media. If you have suggestions for tweets, we encourage you to contact _____ to discuss potential content. We welcome thoughts on industry happenings that our clients, potential clients, the media and other parties might be interested in. If you have found an interesting article or see a new workplace legal trend, please contact him/her to discuss how the Company might share this via Twitter. You are encouraged to re-tweet tweets from the Company's Twitter account *so long as your personal Twitter account and its content conforms to the rules and guidelines in this document.*

Facebook

The Company has also established a Company Facebook page for sharing news on Company events and happenings and interacting with clients and other interested parties. Comments are not currently allowed, but may be allowed in the future. Please feel free to "share" events and posts from the Company's official Facebook page to your own personal Facebook page and network, if you would like, *so long as your personal profile follows the rules and guidelines in this document.* We encourage staff to "suggest" the Company Facebook page to clients who are already in your social media networks to alert them of our new page, and you are encouraged to "like" posts on the Company's Facebook page as well.

Published on *NLRB* (https://www.nlrb.gov)

Acting General Counsel releases report on social media cases

August 18, 2011

Contact:
Office of Public Affairs
202-273-1991
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www.nlrb.gov [2]

Thumbnail:
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The National Labor Relations Board's Acting General Counsel today released a report detailing the outcome of investigations into 14 cases [4]involving the use of social media and employers' social and general media policies. In releasing the document, Acting General Counsel Lafe Solomon said, "I hope that this report will be of assistance to practitioners and human resource professionals."

Each case was submitted by regional offices to the NLRB's Division of Advice in Washington, DC. In four cases involving employees' use of Facebook, the Division found that the employees were engaged in "protected concerted activity" because they were discussing terms and conditions of employment with fellow employees. In five other cases involving Facebook or Twitter posts, the Division found that the activity was not protected.

In one case, it was determined that a union engaged in unlawful coercive conduct when it videotaped interviews with employees at a nonunion jobsite about their immigration status and posted an edited version on YouTube and the Local Union's Facebook page.

In five cases, some provisions of employers' social media policies were found to be unlawfully overly-broad. A final case involved an employer's lawful policy restricting its employees' contact with the media.

Source URL: https://www.nlrb.gov/news/acting-general-counsel-releases-report-social-media-cases

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[4] http://mynlrb.nlrb.gov/link/document.aspx/09031d458056e743

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 11-74 August 18, 2011

To: All Regional Directors, Officers-in-Charge, and Resident Officers

From: Anne Purcell, Associate General Counsel

Subject: Report of the Acting General Counsel Concerning Social Media Cases

Attached is a report of the Acting General Counsel concerning social media cases within the last year.

/s/
A.P.

Attachment

cc: NLRBU
Release to the Public

Administrative Law Judge finds New York nonprofit unlawfully discharged employees following Facebook posts

September 07, 2011

Contact:
Office of Public Affairs
202-273-1991
publicinfo@nlrb.gov [1]
www.nlrb.gov [2]

Thumbnail:
news_seal.gif [3]

In the first ruling of its kind, a National Labor Relations Board Administrative Law Judge has found [4]that a Buffalo nonprofit organization unlawfully discharged five employees after they posted comments on Facebook concerning working conditions, including work load and staffing issues.

The NLRB has received an increasing number of charges related to social media in the past year, as that means of communication grows in popularity. The Office of General Counsel issued a report last month outlining some of the cases. [5] This is the first case involving Facebook to have resulted in an ALJ decision following a hearing.

The case involves an employee of Hispanics United of Buffalo, which provides social services to low-income clients. After hearing a coworker criticize other employees for not doing enough to help the organization's clients, the employee posted those allegations to her Facebook page. The initial post generated responses from other employees who defended their job performance and criticized working conditions, including work load and staffing issues. Hispanics United later discharged the five employees who participated, claiming that their comments constituted harassment of the employee originally mentioned in the post.

The case was heard by Administrative Law Judge Arthur Amchan on July 13-15, 2011, based on a complaint that issued May 9 by Rhonda Ley, NLRB Regional Director in Buffalo, New York.

Judge Amchan issued his decision on September 2, finding that the employees' Facebook discussion was protected concerted activity within the meaning of Section 7 of the National Labor Relations Act, because it involved a conversation among coworkers about their terms and conditions of employment, including their job performance and staffing levels. The judge also found that the employees did not engage in any conduct that forfeited their protection under the Act.

Judge Amchan orderedthat Hispanics United reinstate the five employees and awarded the employees backpay because they were unlawfully discharged. The judge's decision also requires that Hispanics United post a notice at its Buffalo facility concerning employee rights under the Act and the violations found. Hispanics United has the right to appeal the decision to the Board in Washington.

03-CA-027872 Region 03

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