



Questions and Answers: “Employee Rights under the NLRA” Poster Requirement

The National Labor Relations Board (NLRB) recently issued a final rule requiring most private-sector employers to notify employees of their rights under the National Labor Relations Act (NLRA) through a required poster. Below are attempts to answer questions we anticipate that many employers may have regarding this new requirement. This document was compiled using information from the final rule and the NLRB’s own fact sheet found on its website at www.nlrb.gov. The poster is available for free and can be downloaded from the NLRB’s website, <https://www.nlrb.gov/poster>.

Q: What is the general purpose of the posting requirement?

A: The NLRA was enacted in 1935, and regulates most private sector labor-management relations in the United States. The NLRB contends that “many employees protected by the NLRA are unaware of their rights under the statute and that the rule will increase knowledge of the NLRA among employees.” The notice will provide information about the rights of employees to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to refrain from any of these activities. It will also provide examples of unlawful employer and union conduct and instruct employees how to contact the NLRB with questions or complaints. Specific language for the notice is provided by the NLRB in the final rule.

Q: When will the poster requirement take effect?

A: Employers should start posting this notice on or before 11/14/11. Update: **Deadline extended to January 31, 2012.**

Q: Is my company covered by this requirement?

A: The poster requirement applies to all private-sector employees that are subject to the National Labor Relations Act and the jurisdiction of the National Labor Relations Board. This includes most private-sector employers, including labor unions, but excludes agricultural, railroad and airline employers. The U.S. Postal Service has also been specifically excluded. Certain very small employers may also be excluded. See discussion below.

Q: I operate a small business. Am I covered by this requirement?

A: Again, most private-sector employers, including most small business owners, are covered. The notice requirement applies to all employers subject to the NLRB’s jurisdiction. Some very small employers will not be subject to the notice requirement because they are not under the NLRB’s jurisdiction.

- **The NLRB examines jurisdictional issues (covered employer) on a case-by-case basis and the existing law is highly complex. Small businesses who are unsure if they are under the NLRB’s jurisdiction and subject to this poster requirement should consult with labor counsel.**

The NLRB does not exercise jurisdiction over small businesses whose annual volume of business has only a slight effect on interstate commerce. The NLRB generally applies two standards to determine if it has jurisdiction: the retail standard and the nonretail standard.

The retail standard applies to employers in retail businesses, including home construction. The NLRB will take jurisdiction over any such employer with a gross annual volume of business of \$500,000 or more. The nonretail standard applies to most other employers. It is based on the amount of goods sold or services provided by the employer out of state (“outflow”) or goods or services purchased by the

employer from out of state (“inflow”). The NLRB will take jurisdiction over any employer with an annual inflow or outflow of at least \$50,000. There are other standards for miscellaneous categories of employers, such as hotels, cemeteries, and colleges. The following table offers standards for a number of common categories of employers. A more complete discussion of the Board’s jurisdictional standards may be found in [An Outline of Law and Procedure in Representation Cases](#), Chapter 1, found on the Board’s website.

The following is the text from the NLRB regulation ([29 CFR--PART 104](#)) detailing who is covered and who is not:

§ 104.204 What entities are not subject to this part?

(a) The following entities are excluded from the definition of “employer” under the National Labor Relations Act and are not subject to the requirements of this part:

- (1) The United States or any wholly owned Government corporation;
- (2) Any Federal Reserve Bank;
- (3) Any State or political subdivision thereof;
- (4) Any person subject to the Railway Labor Act;
- (5) Any labor organization (other than when acting as an employer); or
- (6) Anyone acting in the capacity of officer or agent of such labor organization.

(b) In addition, employers employing exclusively workers who are excluded from the definition of “employee” under § 104.201 are not covered by the requirements of this part.

(c) This part does not apply to entities over which the Board has been found not to have jurisdiction, or over which the Board has chosen through regulation or adjudication not to assert jurisdiction.

(d)(1) This part does not apply to entities whose impact on interstate commerce, although more than de minimis, is so slight that they do not meet the Board's discretionary jurisdiction standards. The most commonly applicable standards are:

(i) The retail standard, which applies to employers in retail businesses, including home construction. The Board will take jurisdiction over any such employer that has a gross annual volume of business of \$500,000 or more.

(ii) The nonretail standard, which applies to most other employers. It is based either on the amount of goods sold or services provided by the employer out of state (called “outflow”) or goods or services purchased by the employer from out of state (called “inflow”). The Board will take jurisdiction over any employer with an annual inflow or outflow of at least \$50,000. Outflow can be either direct—to out-of-state purchasers—or indirect—to purchasers that meet other jurisdictional standards. Inflow can also be

direct—purchased directly from out of state—or indirect—purchased from sellers within the state that purchased them from out-of-state sellers.

(2) There are other standards for miscellaneous categories of employers. These standards are based on the employer's gross annual volume of business unless stated otherwise. These standards are listed in the Table to this section.

Table to § 104.204

<u>Employer category</u>	<u>Jurisdictional standard</u>
Amusement industry	\$500,000.
Apartment houses, condominiums, cooperatives	\$500,000.
Architects	Nonretail standard.
Art museums, cultural centers, libraries	\$1 million.
Bandleaders	Retail/nonretail (depends on customer).
Cemeteries	\$500,000.
Colleges, universities, other private schools	\$1 million.
Communications (radio, TV, cable, telephone, telegraph)	\$100,000.
Credit unions	Either retail or nonretail standard.
Day care centers	\$250,000.
Gaming industry	\$500,000.
Health care institutions:	
Nursing homes, visiting nurses associations	\$100,000.
Hospitals, blood banks, other health care facilities (including doctors' and dentists' offices)	\$250,000.
Hotels and motels	\$500,000.
Instrumentalities of interstate commerce	\$50,000.
Labor organizations (as employers)	Nonretail standard.
Law firms; legal service organizations	\$250,000.
Newspapers (with interstate contacts)	\$200,000.
Nonprofit charitable institutions	Depends on the entity's substantive purpose.
Office buildings; shopping centers	\$100,000.
Private clubs	\$500,000.
Public utilities	\$250,000 or nonretail standard.
Restaurants	\$500,000.
Social services organizations	\$250,000.
Symphony orchestras	\$1 million.
Taxicabs	\$500,000.
Transit systems	\$250,000.

(3) If an employer can be classified under more than one category, the Board will assert jurisdiction if the employer meets the jurisdictional standard of any of those categories.

(4) There are a few employer categories without specific jurisdictional standards:

(i) Enterprises whose operations have a substantial effect on national defense or that receive large amounts of Federal funds

(ii) Enterprises in the District of Columbia

(iii) Financial information organizations and accounting firms

(iv) Professional sports

(v) Stock brokerage firms

(vi) U. S. Postal Service

(5) A more complete discussion of the Board's jurisdictional standards may be found in [An Outline of Law and Procedure in Representation Cases](#), Chapter 1, found on the Board's Web site, <http://www.nlr.gov>.

(e) This part does not apply to the United States Postal Service.