

New for New York employers: union posters, NYC religious accommodation

Here are two important developments in employment law you should know about.

NLRB requires new union rights poster

The National Labor Relations Board (NLRB) has ruled that private-sector employers must post a notice advising employees of their right to join a union and of their other rights under the National Labor Relations Act (NLRA). The posters must go up by Nov. 14. (See “NLRB: You must display new, pro-union poster by Nov. 14” in the October 2011 issue of New York Employment Law.)



The poster measures 11-by-17 inches, and details employees' rights under the NLRA. It also provides information on how to contact the NLRB should an employee believe an employer has violated the NLRA.

Employers must display the poster both in hard copy at work sites and electronically on an Internet or intranet site, if the employer customarily uses such electronic sites to communicate with employees about company rules and policies.

Despite the 7,000 comments received during an initial comment period, there were very few changes to the proposed rule. In a small victory for management, the final rule does include language stating that employees have the right to refrain from union activity.

The NLRB rule sets forth three possible consequences for failing or refusing to post the notice:

1. Failing to post the notice may

be grounds for an unfair labor practice charge under Section 8(a)(1) of the NLRA, which prohibits employers from interfering with, restraining or coercing employees with regard to the exercise of rights granted under the NLRA.

2. Failing to post the notice may extend the six-month statute of limitations period for filing an unfair labor practice charge.

3. Where the NLRB finds a knowing and willful failure to post a notice, it may use the failure to post as evidence of unlawful motive in an unfair labor practice case.

Initially, however, the NLRB has indicated that its focus will be on compliance, assuming that most employers that do not post a notice are simply unaware of the rule. In those circumstances, once the notice is posted, the case will be closed.

NLRB regional offices will provide employers with a notice poster at no charge, or the notice may be downloaded from the NLRB website.

You can also download a free copy of the poster by visiting www.theHRSpecialist.com/unionposter.

If 20% or more of an employer's workers are not proficient in English, a translated version must be posted. Translated versions will also be available from the NLRB.

NYC strengthens religious accommodations law

On Aug. 17, 2011, the New York City Council passed an amendment to the New York City Human Rights Law that will impose a higher burden on employers that assert that accommodating an employee's or prospective employee's religious observance or practice would constitute an "undue hardship." Mayor Michael Bloomberg signed the Workplace Religious Freedom Act into law, which essentially gives New York City employees greater rights than

other New York employees.

The amendment defines "undue hardship" as "requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system)."

The amendment also lists various factors that will be considered in determining whether the accommodation constitutes an undue economic hardship such as:

- The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer
- The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice
- The degree to which the geographic separateness or administrative or fiscal relationship of the employer's facilities (for employers with multiple facilities) will make the accommodation more difficult or expensive.

An employee or prospective employee is still required to show that the requested accommodation does not prevent him or her from performing the essential functions of the position.

The law, now in effect, affects New York City employers and nonresident employers that may have employees working in New York City.

Employers should review their job descriptions to ensure that the essential functions of the position are accurately described. Employers that have received religious accommodation requests should engage in an interactive process with the employee and use the above factors as parameters for granting or denying a request.