

## Heads up! Employment law in the news means employee chatter

There's plenty of employment law news making its way into the mainstream media. That means the workplace will be buzzing with employee chatter about working conditions, pay and unions. Prepare now for how to react.

### The WTPA rumor mill

On Feb. 1, New York employers were required for the first time to post annual notices mandated under the state's Wage Theft Prevention Act (WTPA).

The WTPA requires employers to annually notify employees of their rates of pay, designated pay day, the employer's intent to claim allowances (like tip or meal allowances) as part of the minimum wage and the basis of wage payment (by hour, shift, day, week, piece, etc.).

The simple reality is that distribution of these annual pay notices is likely to lead to co-worker gossip about wage and salary information. That makes now a good time to review your rules about discussing pay and benefits.

Remember, blanket rules—either formal or informal—prohibiting employees from discussing their pay and benefits with their co-workers are unlawful under the National Labor Relations Act (NLRA).

The NLRA provides private-sector employees the right to engage in protected concerted activity regarding their terms and conditions of employment. This generally includes employees' rights to share and discuss information with co-workers about their wages, benefits and other working conditions. This applies in both union and nonunion workplaces. Employers may not promulgate or enforce any type of policy that prohibits such discussions.

Even a broadly written confidentiality policy may be found to violate the NLRA if an employee could reasonably view it as restricting discussions with co-workers about wages

and other working conditions.

Review your policies to ensure that they don't explicitly or implicitly prohibit wage discussions among employees that might be found to violate the NLRA. Tell managers to avoid knee-jerk reactions to hearing such discussions that will inevitably arise from the distribution of the annual WTPA notice to employees.

### NLRB's union-rights poster

Next up is the National Labor Relations Board (NLRB) employee rights poster which informs employees of their right to join and form a union under the NLRA.

The NLRB has twice pushed back the posting date. Now the notice must be posted by April 30, 2012.

The ruling was initially scheduled to take effect on Nov. 14, 2011. Last September, business groups sued the NLRB, challenging its authority to implement the rule. So the board announced in October that it was postponing the effective date of the rule to Jan. 31, 2012.

This most recent postponement to April 30 comes at the request of the U.S. District Court judge who recently heard oral arguments with respect to one of those lawsuits. That court could ultimately strike down the rule. If it doesn't, however, expect more watercooler talk about wages and benefits.

Learn more at [www.theHRSpecialist.com/unionposter](http://www.theHRSpecialist.com/unionposter).

### New union election rules

The NLRB also recently adopted a final rule amending the procedures for union elections. It did so right before wrapping up its 2011 business, and the rule will go into effect on April 30, 2012.

The amendments to the union representation election procedures are intended to shorten the amount of time between the filing of a representation petition and the election.

The U.S. Chamber of Commerce

and the Coalition for a Democratic Workplace filed a lawsuit on Dec. 20, 2011 in the U.S. District Court for the District of Columbia, challenging the NLRB's authority to adopt the final rule, and seeking an order enjoining the board from enforcing the final rule.

Learn more at [www.theHRSpecialist.com/unionvote](http://www.theHRSpecialist.com/unionvote).

### Controversial NLRB appointments

President Obama made three recess appointments (*see [www.theHRSpecialist.com/recess](http://www.theHRSpecialist.com/recess)*) to fill the open positions on NLRB, restoring the quorum that the NLRB lost at the end of 2011 earlier when member Craig Becker's own recess appointment expired.

The three recess appointees are Democrats Sharon Block (a former Obama administration Department of Labor official) and Richard Griffin (formerly head lawyer for a labor union) and Republican Terence Flynn (formerly a lawyer on the NLRB staff).

The recess appointments restore the NLRB to a 3-2 Democratic majority. That means employers can continue to expect NLRB decisions and rule-making efforts that favor union-organizing efforts.

Republicans in the U.S. Senate have complained that the recess appointments bypassed the Senate confirmation process for Presidential nominees mandated in the Constitution. The senators protested that they had almost no time to consider and review the nominations.

**The bottom line for employers:** Keep in close contact with your attorney during 2012 to make sure you have the information you need to anticipate and answer questions about today's employment law topics in the news.

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*Tyler Hendry, Erin Sylvester Torcello and Subhash Viswanathan are members of Bond, Schoeneck & King's Labor Law and Employment Law Practice.*