

NLRB requires employers to post unionization rights

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WASHINGTON – The National Labor Relations Board issued a [final rule](#) last week requiring employers to post notices advising employees of their rights to unionize. The new rule, which goes into effect Nov. 14, faced much opposition from businesses that argued that current rules suffice and the board lacks the authority to create such a rule.

The NLRB said it was issuing the final rule requiring the posting of notices because it believes that in many cases employees do not know about their rights to unionize under the National Labor Relations Act (NLRA). “The Board believes 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, in order to better enable the exercise of rights under the statute,” noted the NLRB in its final rule.

The board said that the workplace is the best place for notifying employees about their rights under the NLRA and since bulletin board posting is a common and effective way that employers communicate with its employees, employers should be required to post notices to employees about their right to unionize.

NLRB’s final rule also sets out the size, form and content of the required notices and notes that failure to post notices will be considered an unfair labor practice.

The NLRB received more than 7,000 comments from employers, employees, unions and others during the comment period. The board acknowledged that the majority of the comments opposed the proposed rule or parts of it. Many of the critics, including NLRB member, Brian Hayes, argued that the rule isn’t needed and that the board does not have the statutory authority to create or enforce the rule.

“Today, my colleagues conjure up a new unfair labor practice based on a new statutory obligation,” Hayes said in his dissent to the rule. “While the need for a more informed constituency might be a desirable goal, it is attainable only with Congressional imprimatur. The Board’s rulemaking authority, broad as it is, does not encompass the authority to promulgate a rule of this kind. Even if it did, the action taken here is arbitrary and capricious, and therefore invalid, because it is not based on substantial evidence and it lacks a reasoned analysis.”

The NLRB has been under attack in recent months for a number of rules it is considering that opponents say are pro-union, including a proposed rule to speed up unionization elections and another changing how workers in non-acute care facilities, such as nursing homes, are unionized. The NLRB is expected to announce its final rule on the latter proposal