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MEMORANDUM

To: N.G.A. Members

From: Jay P. Krupin
Kara M. Maciel

Date: August 26, 2011

Re: **NLRB Final Rule Requiring Posting of Notice of NLRA Rights In The Workplace.**

This memorandum summarizes the major provisions of the rule issued by the NLRB earlier today requiring employers to post a notice of employees' rights under the NLRA. The major provisions of the rule are as follows:

- **Contents of the Notice:**
 - The notice states that employees have the right to:
 - Organize a union to negotiate with their employer concerning wages, hours and other terms and conditions of employment.
 - Form, join or assist a union.
 - Bargain collectively through representatives of their own choosing.
 - Discuss their terms and conditions of employment or union organizing with their coworkers or a union.
 - Take action with one or more co-workers to improve their working conditions by, among other means, raising work-related complaints directly with their employer or seeking help from a union.
 - Strike and picket, depending on the purpose or means of the strike.
 - Refrain from engaging in any of the above listed activities, and to refrain from joining or remaining a member of a union.
 - The notice also lists several examples of employer and union behavior that is unlawful under the NLRA.
 - The notice states that if the employees choose to be represented by a union the employer and union must bargain in good faith and that the union is required to fairly represent the employees.
 - The notice instructs employees to contact the NLRB if they suspect unlawful conduct and provides instructions on how to file complaints.

- **Posting Requirements:**
 - The notice must be 11 by 17 inches.
 - The notice must be physically posted (in color or black and white) wherever notices to employees regarding personnel rules and policies are normally posted, not just where legally mandated notices are posted.
 - If the employer customarily posts employment notices in electronic format (on an internet or intranet site), the notice must be posted electronically on the employer's internet or intranet site. (E-mail notice is not required).
 - If a significant portion (20% or more) of the employer's workforce does not speak English proficiently and speaks another language the employer must post the notice in English and the language spoken by the employees.
 - An employer is not required to post the notice in another language unless the group of employees that speak that particular language as their primary language comprises 20% or more of the employer's workforce.
 - Notices in other languages must be obtained from the Board.
 - If the notice is not available in a requested language an employer will not be found in violation of the rule.
 - Notices must be posted by November 14, 2011.
- **Consequences of Failure to Post:**
 - Failure to post may be found to constitute an unfair labor practice.
 - Failure to post may be ground for tolling the statute of limitations for unfair labor practices charges.
 - Tolling does not apply to unfair labor practice charges by unions.
 - The Employer has an affirmative defense to tolling if it proves that the employee had actual or constructive notice of his or her rights under the NLRA.
 - Knowing and willful failure to post the notice may be deemed to be evidence of unlawful motive in an unfair labor practice case.

We trust that this memorandum is helpful in understanding the NLRB's new rule. Please feel free to contact us if you have any questions.

Best regards.