

Coping With The New Pro-Union Rules From The NLRB and USDOL

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The NLRB Notice Posting Rule

- What the Rule requires
- How the new Rule came to be
- When does it go into effect, if at all
- Status of the lawsuits against the new Rule
- What ABC members should do to comply, and when

What The New NLRB Notice Posting Rule Requires

- All employers covered by the NLRA will have to post a new notice written by NLRB
- The new notice tells employees about their rights to organize and support unions
- The notice gives very little notice to employees of their rights not to support unions



Employee Rights

Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.



- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>.

You can also contact the NLRB by calling toll-free: **1-866-667-NLRB (6572)** or **(TTY) 1-866-315-NLRB (1-866-315-6572)** for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

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How The New NLRB Rule Came To Be

- No such requirement in the NLRA (the law for 75 years)
- Obama's appointment of three union lawyers to the NLRB
- Proposed rule appeared in early 2011 for public comment; more than 7000 comments were filed, mostly opposing
- The NLRB made the rule final in August 2011, with only a few changes

When The New NLRB Posting Rule Is Supposed To Go Into Effect

- Original November effective date now postponed to Jan. 31, 2012
- The pending lawsuits could delay the effective date further or even block it entirely
- No action required in the meantime
- FAQs

What ABC Members Should Do Now

- Watch and Wait – Monitor ABC’s Newsline and nlrb.gov
- Continue to speak out against the new Rule
- ABC’s Supplemental Notice Language
- No notice posting is required yet

The NLRB's Proposed Rule on "Quickie" Union Elections

- What the proposed rule would require
- What the impact of the proposed rule would be
- Status of the proposed rule
- What ABC members should do now

What the proposed quickie election rule would require

- Cuts in half the time period to hold union elections
 - from 40 days to less than 20 days.
- Employers must immediately file a statement of issues justifying a pre-election hearing or else waive their rights
- Employers will have to disclose much sooner highly personal information about their employees
- Other technical rule changes all be aimed at speeding up the election process

Impact of the Proposed Rule

- Denial of employers' due process rights
- Denial of employers' right to communicate with their employees before the elections
- Denial of employees' right to learn all the facts about unions before they vote
- A "back door" to EFCA?

Status of the Proposed Quickie Election Rule

- Public comments on the proposed rule were due in August
- More than 70,000 comments filed by members of the public, mostly in opposition
- The NLRB expected to issue the final rule before January 31, 2012 (Why that deadline is important).
- Lawsuits will likely follow to try to block the new rule

What ABC Members Should Do Now

- Watch and wait
- Continue to speak out in opposition to the proposed rule
- Support the lawsuits to block the rule
- Train management now how to respond to organizing
(There may not be time later if the rule goes into effect)

USDOL'S Proposed Change To The "Persuader" Reporting Rule

- What the proposed rule would do to the "advice" exemption
- What the impact of the proposed rule would be on ABC members and ABC itself
- Status of the proposed rule

What Is The Current “Persuader” Rule?

- Public reports required for any “persuasion” of employees about unions by outside consultants (including ABC and lawyers)
- Both employers and persuaders have to file reports within 30 days or face criminal penalties.
- Even broader annual reports required for persuaders, disclosing even non-persuader labor relations services for other clients (in most parts of the country).
- The “advice” exemption, for the past 50 years, has meant no reports required, so long as only the employer does the actual communicating with employees.

What DOL's Proposed Rule Would Change

- DOL wants to radically narrow the “advice” exemption.
- DOL would require reports from employers and consultants any time the consultant’s advice “indirectly” persuades employees.
- This new rule could require reports any time an ABC chapter or lawyer gives an employer “talking points” or flyers or paycheck stuffers about unions, or even recommends personnel policies or offers management training seminars about union.

Why The New Persuader Rule Is Such A Big Deal

- Many forms of labor relations “advice,” currently exempt, will become publicly reportable
- Due to vagueness, no one will be sure whether a report is required
- To avoid filing the reports, many labor advisors may have to stop giving advice
- Filing the reports will be very burdensome for employers and advisors
- Criminal penalties apply

Status Of The New Persuader Rule

- Published for comment in June 2011
- Comments were due in September 2011
- Thousands of comments were filed, mostly opposing
- Final rule expected by early 2012
- Lawsuits are expected

The Not So Hidden Agenda Behind These Rules

- Promote union organizing
- Give employers less time to educate themselves and their employees when a petition is filed
- Make it harder for employers to get help due to the new persuader reporting requirements

ABC'S RESPONSE

- Comments filed in opposition
- ABC coalition sued the NLRB over the Notice Posting rule
- ABC and the coalition expect to sue again over the quickie election rule and the persuader rule
- Legislation unlikely
- Elections have consequences - 2012

Q & A