



Labor Board Says Notice Posting Requirement Cannot Be Satisfied During Shutdown

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When the NLRB finds that employers have violated the NLRA, it often subjects the employer to its so-called “notice posting” remedy. The notice is required to be posted conspicuously in the workplace, and informs employees of the violation(s), as well as the employer’s commitment to follow the law in the future. The notice must be posted within 14 days of the Board ordering it, and must remain in place for 60 days.

An employer currently shut down due to the ongoing COVID-19 public health emergency may find it convenient to skirt the intent of the notice posting rule (i.e., to notify employees of the violation(s) found by the Board) by duly posting the notice in an empty workplace. Indeed, the 14-day timeframe for posting seems to *require* such action if the employer found to have violated the Act is in shutdown mode 14 days after the Board’s order.

This week, however, the Board said “not so fast!” It announced that for businesses shut down or operating with a significantly smaller workforce due to the COVID-19 outbreak, the 14-day rule does not apply, and the 60 day time period for posting does not begin to run until a “substantial compliment” of workers has returned. The reason for the adjustment is clear as it salvages the central purpose of the notice posting rule. For employers, however, it closes the door on what some may have seen as an opportunity to avoid the annoyance of the notice posting.

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