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**LAMB & BARNOSKY, LLP**  
ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR PRIVATE SECTOR EMPLOYER CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: APRIL 9, 2012**

**RE: REQUIRED POSTING OF NOTICE OF EMPLOYEE RIGHTS BY  
APRIL 30, 2012**

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Pursuant to a National Labor Relations Board (“the NLRB”) rule, all employers subject to the National Labor Relations Act (“the NLRA”) are required to post a notice informing employees of their NLRA-related rights by April 30, 2012 (“the Posting Rule”). As reported in our previous memoranda dated October 14, 2011 and January 25, 2012, the deadline for employers to post the required notice had twice been postponed by the NLRB and, at this time, April 30 is the deadline. Copies of our earlier memoranda regarding the Posting Rule are attached.

A federal district court judge in the District of Columbia recently rejected a legal challenge to the Posting Rule’s notice requirement. Specifically, the Judge ruled that the NLRB did not exceed its statutory authority pursuant to the NLRA by adopting the Posting Rule. However, the Judge invalidated certain portions of the Posting Rule regarding enforcement procedures and the potential consequences of noncompliance. In this regard, the Judge struck down the provision that a failure to post the notice would automatically constitute an unfair labor practice, but stated that the NLRB may reach that conclusion on a case-by-case basis after making “a specific finding based on the facts and circumstances [of an] individual case ... that failure to post interfered with the employee’s exercise of his or her rights.”

In addition, the Judge invalidated the provision allowing an employee additional time beyond the statutory six months to file an unfair labor practice charge against an employer which failed to post the notice. Because it was not specifically challenged, the Judge upheld the portion of the Posting Rule permitting the NLRB to use an employer’s knowing and willful failure to post the notice as evidence of an unlawful motive in an unfair labor practice case involving other alleged NLRA violations.

For the time being, employers subject to the NLRA must post the notice by April 30, 2012. Copies of the required notice, written in both English and foreign languages, can still be obtained at no cost at any of the NLRB’s regional offices or by download from the NLRB’s website at <http://www.nlr.gov>.

The decision of the federal district court judge discussed above has been appealed and another legal challenge to the Posting Rule is pending in a federal district court in South Carolina. We will provide you further updates as they occur.

If you have any questions regarding the Posting Rule, please do not hesitate to contact us.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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**TO: OUR PRIVATE SECTOR EMPLOYER CLIENTS**  
**FROM: LAMB & BARNOSKY, LLP**  
**DATE: JANUARY 25, 2012**  
**RE: REQUIRED POSTING OF NOTICE OF EMPLOYEE RIGHTS**  
**NEW EFFECTIVE DATE – APRIL 30, 2012**

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In October 2011, we sent you the enclosed memorandum regarding the rule adopted by the National Labor Relations Board (“the NLRB”) requiring all employers subject to the National Labor Relations Act (“the NLRA”) to post a notice informing employees of their NLRA-related rights. The NLRB has since postponed the effective date of this requirement. The notice must now be posted by April 30, 2012.

Copies of the required notice, written in both English and foreign languages, can be obtained at no cost at any of the NLRB’s regional offices or by download from the NLRB’s website at <http://www.nlr.gov>.

Legal challenges to the rule are still pending and we will provide a further update if the rule is repealed, suspended or amended.

If you have any questions regarding this new rule, please do not hesitate to contact us.

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## MEMORANDUM

**TO: OUR PRIVATE SECTOR EMPLOYER CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: OCTOBER 14, 2011**

**RE: NEW REQUIRED POSTING OF NOTICE OF EMPLOYEE RIGHTS**

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Pursuant to a rule adopted by the National Labor Relations Board ("the NLRB"), all employers subject to the National Labor Relations Act ("the NLRA") must, starting on January 31, 2012, post a notice informing employees of their NLRA-related rights. Employers were originally required to post the notice starting on November 14, 2011, but the NLRB has announced that it is postponing the effective date until January 31, 2012.

This rule applies to all employers subject to the NLRA regardless of whether the employer has a unionized workforce.<sup>1</sup>

### Obtaining A Copy Of The Required Notice

Copies of the required notice, written in both English and foreign languages, can be obtained at no cost at any of the NLRB's regional offices or by download from the NLRB's website at <http://www.nlr.gov>.

If the notice is downloaded from the website, employers must print it in color on paper that is at least 11 inches by 17 inches in size. Employers may also use a commercially produced poster that consolidates other legally mandated labor and employment notices into one large poster, as long as the portion of the poster containing the NLRA rights notice is identical in size, content, format, and style to the NLRA rights notice provided by the NLRB.

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<sup>1</sup> The NLRA applies to most private sector employers. It does not apply to an employer who exclusively employs agricultural workers, domestic workers, and/or his or her own children or spouse, or to any Federal Reserve Bank or a carrier covered by the Railway Labor Act. In addition, pursuant to standards adopted by the NLRB, the NLRB will not assert its jurisdiction over certain very small employers as determined by the volume of business or the amount of goods and services sold or provided or purchased by the employer. The threshold amounts, which are relatively low, vary depending on the category of the business. We recommend that you contact us if you have any questions regarding the applicability of the NLRA or the new posting rule to your business.

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**Posting Requirements**

The notice must physically be posted in conspicuous places where it can be readily seen by all employees and in each location where the employer customarily posts personnel rules and policies. In addition, if the employer has a website on which it customarily posts rules and policies related to personnel matters, the employer must also post the NLRA rights notice on its website. This can be accomplished by posting an exact copy of the notice downloaded from the NLRB website or by posting a link to the NLRB website. If an employer opts to post the link to the NLRB website, the link on the employer's website must read, "Employee Rights under the National Labor Relations Act."

**Requirements For Workplaces Where Employees Speak Foreign Languages**

If 20% or more of the workforce is not proficient in English and speaks a language other than English, the employer must also post a copy of the notice written in the language the non-English speaking employees speak. If these non-English speaking employees speak more than one language, the employer may either: (1) post a copy of the notice written in each language; or (2) post a copy of the notice written in the language spoken by the largest group of non-English speaking employees and provide each other non-English speaking employee a copy of the notice written in the language that he or she speaks. In addition, if the employer has a website on which it customarily posts personnel policies and rules, the employer must download from the NLRB website and post exact copy(ies) of the foreign language notice(s) or post a link to the NLRB website (appropriate translations of the link will be provided by the NLRB). If a notice is not available from the NLRB in a language that an employer must post pursuant to this rule, the employer will not be held liable for noncompliance.

**Noncompliance**

The NLRB does not conduct audits of workplaces. Nor does it initiate enforcement actions on its own. There are no monetary fines for failure to post the notice. If, however, a failure to post the notice is brought to the Board's attention through the filing of an unfair labor practice charge, the employer may be found to have committed an unfair labor practice. The NLRB has stated that, in most cases, it expects that an employer which failed to post the notice will have been unaware of the rule and so will simply require the employer to post the notice. If the employer complies with that directive then, in most situations, the matter will be deemed closed without any further action by the NLRB.

Failure to post the notice, however, could affect the outcome of unfair labor practice proceedings brought against the employer relating to other violations of the NLRA. For example, an employee typically has six months to file an unfair labor practice charge. The NLRB has indicated that this six-month period may be extended if the employer fails to post the NLRB notice. In addition, a "knowing and willful refusal" by an employer to post the notice may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged NLRA violations.

**Challenges To The New Rule**

In the short time since its adoption, legislative bills seeking to repeal the new rule have been introduced and lawsuits challenging it have been filed. At this time, however, employers should be prepared to comply with the rule beginning on January 31, 2012 unless and until the litigation is successful or the new legislation is implemented. We will further update you if the rule is repealed, suspended or amended.

If you have any questions regarding this new rule, please do not hesitate to contact us.

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