

MODERN MANAGEMENT

NATIONAL ASSOCIATION OF MANUFACTURERS (NAM) FILES SUIT IN ATTEMPT TO BLOCK UNION RIGHTS NOTICE RULE

The NAM filed a lawsuit due to new regulations recently imposed by the National Labor Relations Board (NLRB) and scheduled to take effect on November 14, 2011. The lawsuit filed in USDC for the District of Columbia claims that the NLRB acted outside of its authority in issuing the regulation, which requires most private-sector employers, including labor unions, to post a notice of employee rights where other workplace posters are usually displayed. The new requirement applies to businesses that are subject to the National Labor Relations Act (NLRA), excluding railroad, airline and agricultural employers.

The NLRB asked for comments on their proposed revisions to regulations governing union election procedures and received more than 30,000 comments from employers, unions, legislators and business groups. Some of the comments have not been flattering.

The NLRB has been under fire from many business leaders and Republicans for taking “an activist” role in favor of labor unions. “This rule is just another example of the board’s aggressive overreach to insert itself into the day-to-day decisions of businesses and to exert powers it does not have,” said Jay Timmons, president and CEO of NAM, regarding the requirement to post employee rights.

U.S. CHAMBER FILES ACTION AGAINST NLRB

The U.S. Chamber of Commerce and the South Carolina Chamber of Commerce have filed for an injunction to bar the NLRB from requiring employees’ rights to be posted. The chamber lawsuit, filed in USDC for the District of South Carolina, alleges that the NLRB arbitrarily and capriciously ignored National Labor Relations Act Section 14(b) when it imposed the new requirement. South Carolina is one of 22 right-to-work states, as is Louisiana.

DEFENSE OF MARRIAGE ACT UNDER ATTACK BY ENGINEERING UNION AND FEDERAL EMPLOYEES

The need for a national policy on same-sex marriage has been forced into the national conscience on many fronts. Most recently, the International Federation of Professional and Technical Engineers has suggested that the Office of Personnel Management set up a fund to compensate gay and lesbian federal

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SEMINAR INVITATION

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BRIEFING

A half-day labor and employment law seminar.

Wednesday, October 26, 2011,
8:30—12:00 Noon
Embassy Suites Hotel
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Topics:

- *Harassment Goes Cyberspace
- *GINA—The Law and Its Impact on ADA
- *Preparing for Renewed Union Organizing As Recent Labor Board Decisions Encourage Organized Labor

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REGISTRATION

To register for the seminar please contact:

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DEFENSE OF MARRIAGE ACT (DOMA) UNDER ATTACK BY ENGINEERING UNION AND FEDERAL EMPLOYEES *(continued from page 1)*

employees who have applied for employer-provided health and/or dental benefits for their legally married spouses and been denied.

Specifically, the IFPTE alleges that NASA is unlawfully discriminating against employees in California: "In direct violation of its own EEO statement, NASA currently has civil servants who happen to also be IFPTE members at Ames Research Center in California who are lawfully married to their same-sex spouses under California law, but are discriminated against in the area of benefits because they cannot put their spouses on their health benefits programs."

The 2010 Census had a "married option" for gay couples. Households with same-sex partners registered 650,000 in the United States with 5,379 in Louisiana. Households with "married same-sex partners" registered 131,729 in the United States with 1,283 in Louisiana (a state that does not recognize same-sex marriage).

WHISTLEBLOWERS NOT ALWAYS GETTING THE INTENDED PROTECTION UPFRONT

The General Accounting Office reports that the IRS' bounty program has shortcomings. The whistleblower office is continuing to develop and "communicate best practices" to enforcement staff so that the investigative staff has documentation of whistleblower interactions.

The Securities and Exchange Commission's Office of the Whistleblower is wrestling with whistleblowers and their counsel. Some of the issues involve the broad scope of the Dodd-Frank whistleblower protection provisions, and whether to self-report or possibly outsource investigative responsibilities to outside parties. The SEC is also considering streamlining certification forms that ask employees to report any unlawful or unethical activity.

On another front, the Labor Department's Administrative Review Board determined that exposing a whistleblower's identity was an adverse action under SOX Section 301. An Administrative Law Judge had dismissed the claim ignoring SOX Section 806's statutory language in *Menendez v. Halliburton Inc.*, a case where the employee complained about accounting practices.

LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

The labor and employment attorneys in our firm have a national and international practice representing union and non-union companies in almost every industry. Our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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