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NLRB "Employee Rights" Notice Posting Requirement Takes Effect April 30, 2012

The National Labor Relations Board's (NLRB) new "Employee Rights" notice posting requirement for employers will take effect April 30, 2012. The Board found that, more than six decades after its enactment, there is still a lack of basic information about the National Labor Relations Act (NLRA). The goal of the posting requirement is to educate employees of their right to choose a union as their exclusive bargaining representative in all phases of the process, from talking as a group about the conditions of the work environment to choosing a union to negotiate employee rights.

The NLRB published the rule requiring employers to post the notice on August 31, 2011, and initially set an effective date of November 14, 2011. However, the NLRB agreed to postpone the effective date of its employee rights notice-posting rule after determining that postponement would facilitate the resolution of the legal challenges that have been filed with respect to the rule. The new implementation date is April 30, 2012.

It is more important than ever that employers be aware of their obligations under the Act. The regulation will have a significant impact on union-free and partially unionized employers.

Among the employee rights that are delineated in the notice are the rights to unionize, collectively bargain, and strike. Furthermore, the notice includes a list of unlawful employer conduct and provides contact information for the NLRB which not only makes the employer more vulnerable for claims of unfair labor practices but it may also create questions by the employee which employers need to be ready to answer.

As of April 30, 2012, most private sector employers, including manufacturing plants, retail centers, private universities, and health care facilities, will be required to post the notice advising employees of their rights under the National Labor Relations Act. The notice, which will be available in

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OSHA Proposal Changes Recordkeeping Rule, Covers More Employers

In June 2011, the U.S. Occupational Safety and Health Administration (OSHA) announced in a Notice of Proposed Rulemaking (NPRM) the agency's plan to update requirements under its recordkeeping rule, including removing some partial exemptions for certain employers in order to increase the number of employers who will be covered under the rule.

Most recently, at the end of September 2011, OSHA reopened the NPRM to extend the comment period on revising its recordkeeping and reporting requirements for work-related injuries and illnesses. Employers and other entities interested in submitting comments on how the revised requirements might affect them were required to do so by October 28, 2011.

The new proposed reporting requirements revises OSHA's current regulation that requires an employer to report to OSHA, within eight hours, all

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OSHA Issues Interim Final Rule on Sarbanes-Oxley Whistleblower Protections

The Occupational Safety and Health Administration, tasked with administering the federal government's many whistleblower protection programs, has issued an interim final rule to incorporate changes made under the Dodd-Frank Act to the protections found in the earlier Sarbanes-Oxley Act.

A public commentary period ran through January 3, 2012. Now OSHA will move to amend the interim rule and/or ultimately publish it as a final rule.

Sarbanes-Oxley, or SOX as it is commonly called, is an act that was passed in the wake of the Enron scandal to facilitate whistleblowing and enforce accountability at firms that play loose financially.

On July 30, 2002, President George W. Bush signed the act into law, which he characterized as "the most far reaching reforms of American business practices since the time of Franklin Delano Roosevelt." The act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and also created the "Public Company Accounting Oversight Board," known as the PCAOB, to oversee the activities of the auditing profession.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of July 2010 further augmented SOX in light of the banking and Wall Street collapses of 2008, in addition to venturing into new areas of regulation, such as executive compensation, transparency and accountability at financial institutions, and consumer protections—ultimately establishing a Consumer Financial Protection Bureau.

Dodd-Frank also augmented SOX whistleblower provisions by adding protection for employees against retaliation by nationally recognized statistical rating organizations; by extending from 90 to 180 days the statutory filing period for retaliation complaints; by providing SOX Act claimants with the right to jury trials in district court if the secretary of Labor does not act on their complaints within 180 days of filing; and by providing that employees cannot waive SOX Act whistleblower rights, including through any pre-dispute arbitration agreement.

Among the changes to improve the complaint filing process, the revised rules will allow SOX complainants to file complaints orally and in any language, and enhance the sharing of information between parties throughout the investigation.

The Dodd-Frank Act clarified that the SOX Act whistleblower provisions apply to any company with a class of securities registered under Section 12 of the Securities and Exchange Act or that is required to file reports under Section 15(d) of the federal securities statute, OSHA said in an introduction to the interim final rule.

Dodd-Frank also clarified that subsidiaries and affiliates of companies meeting the SEC filing criteria are covered by the SOX Act whistleblower provisions, OSHA added.

"The ability of workers to speak out and exercise their legal rights without fear of retaliation is crucial to many of the legal protections and safeguards that all Americans value," said OSHA head David Michaels. "In a continuing effort to improve the Whistleblower Protection Program and make the filing process easier, the rules have been updated to reflect the changes required by the statute."

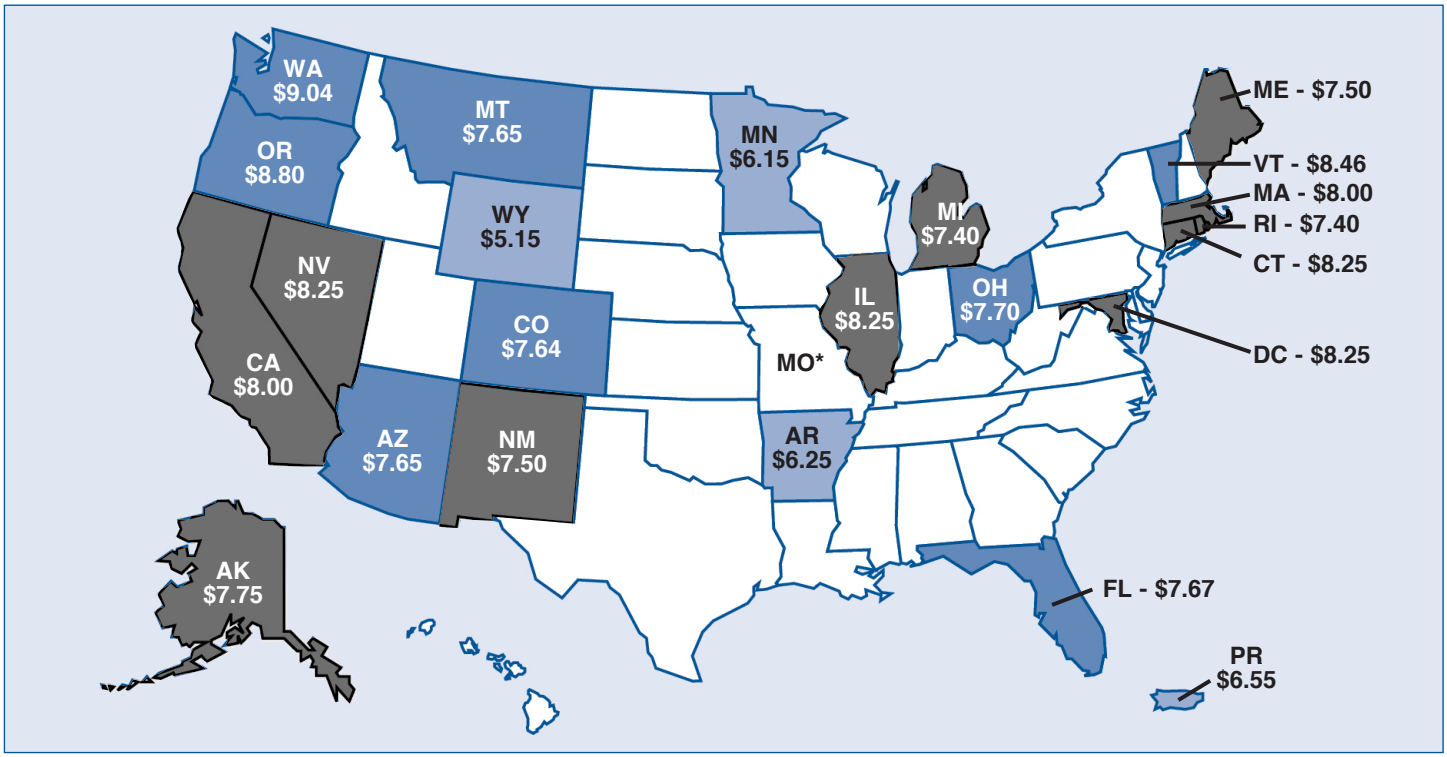
OSHA enforces the whistleblower provisions of the Occupational Safety and Health Act and 20 other statutes protecting employees who report reasonably perceived violations of various workplace, commercial motor vehicle, airline, nuclear, pipeline, environmental, railroad, public transportation, maritime, consumer product, health care reform, corporate securities, food safety and consumer financial reform regulations. Additional information is available at http://www.whistleblowers.gov. ◆

Recent Posting Revisions (10/11 - 01/12)

- Arizona – Minimum Wage
- California – Discrimination and Harassment
- California – Family Care and Medical Leave and Pregnancy Disability Leave
- Colorado – Minimum Wage
- Connecticut – Discrimination
- Connecticut – Paid Sick Leave
- Florida – Minimum Wage
- Montana – Minimum Wage
- New Jersey – Maintain and Report Records
- Ohio – Minimum Wage
- Oklahoma – Workers' Compensation
- Oregon – Minimum Wage
- Vermont – Minimum Wage
- Washington – Minimum Wage

Compliance Concepts newsletters are intended to provide you with additional guidance on labor laws and OSHA regulations to help turn you into informed employers and keep you in compliance with the latest labor laws. If you have any employment related topics that you would like to see covered in future newsletters articles, please send your ideas and/or article submissions to answers@personnelconcepts.com. While all submissions will be taken into consideration, we will publish those that are most applicable to the majority of our client base and employers in general.

State Minimum Wage Increases Effective January 2012



States Increasing Minimum Wage Effective January 1, 2012

State	*Minimum Wage*	*State*	*Minimum Wage*
Arizona	$7.65	Ohio	$7.70
Colorado	$7.64	Oregon	$8.80
Florida	$7.67	Vermont	$8.46
Montana	$7.65	Washington	$9.04

States that Match Federal Minimum Wage of $7.25

Alabama	Iowa	Mississippi	North Dakota	Texas
Delaware	Kansas	Nebraska	Oklahoma	Utah
Georgia	Kentucky	New Hampshire	Pennsylvania	Virginia
Hawaii	Louisiana	New Jersey	South Carolina	West Virginia
Idaho	Maryland	New York	South Dakota	Wisconsin
Indiana	Missouri*	North Carolina	Tennessee	

States with Minimum Wage Less than Federal

State	*Minimum Wage*	*State*	*Minimum Wage*
Arkansas	$6.25	Puerto Rico	$6.55
Minnesota	$6.15	Wyoming	$5.15

Other States with Minimum Wage Higher than Federal

State	*Minimum Wage*	*State*	*Minimum Wage*
Alaska	$7.75	Massachusetts	$8.00
California	$8.00	Michigan	$7.40
Connecticut	$8.25	Nevada	$8.25
District of Columbia	$8.25	New Mexico	$7.50
Illinois	$8.25	Rhode Island	$7.40
Maine	$7.50		

***Rate will increase annually based upon cost of living formula**

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27 languages, will need to be posted in a conspicuous place, where other notifications of workplace rights and employer rules and policies are posted.

Employers must also post the notice on an intranet or an internet site if personnel rules and policies are customarily posted in such a manner. If employers post electronic notices on an intranet or Internet site, they should differentiate the NLRB required posting from company-created policies. Employers should also specifically identify that the NLRB posting is made available to comply with federal law.

The NLRB posting regulation does not require companies to keep records of posting the notice. However, employers are recommended to establish some record of when and where the required notice was posted, such as logging the posting through HR or taking a photo of the posting. Such records would be important evidence if an employer had to defend against an unfair labor practice charge. Failure to post the notice may constitute an unfair labor practice and may be considered evidence of unlawful motive in certain proceedings before the NLRB. ◆

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work-related fatalities and in-patient hospitalizations of three or more employees. Under the revised proposal, employers would be required to report to OSHA any work-related fatalities and all in-patient hospitalizations within eight hours, as well as work-related amputations within 24 hours. Reporting amputations is not required under current regulations.

OSHA is also proposing to update Appendix A of the recordkeeping rule (Part 1904 Subpart B) that lists industries partially exempt from the requirements to maintain work-related injury or illness logs. These industries received partial exemption because of their relatively low injury and illness rates. The current list of industries is based on the Standard Industrial Classification (SIC) system. In 1997, the North American Industry Classification System (NAICS) was introduced to replace the SIC system for classifying establishments by industry. When OSHA first issued the recordkeeping rule in 2001, the agency used the old SIC code system because injury and illness data were not yet available based on the NAICS. With this data now available under the NAICS system, OSHA may now incorporate more precise industry classifications when the revised rule is published. Finally, OSHA is also updating Appendix A in response to a 2009 Government Accountability Office (GAO) report recommending that the agency update the coverage of the relevant recordkeeping requirements from the old SIC system to the newer NAICS.

To educate employers and employees on the proposed changes, OSHA updated its Recordkeeping Web Page to include answers to frequently asked questions regarding the proposed rule (found at www.osha.gov/recordkeeping). OSHA has made several tools available on the page to increase awareness and aid in compliance efforts, including the OSHA Recordkeeping Handbook and "A Brief Tutorial on Completing the Recordkeeping Forms." The OSHA Recordkeeping Handbook is a compendium of existing agency approved policy, including the original 2001 Recordkeeping Rule, Frequently Asked Questions and Letters of Interpretation. The tutorial is in a presentation format that allows employers to review OSHA recordkeeping requirements at a high level, with an emphasis on how to fill out the forms, what types of operations come under the recordkeeping rule, what types of injury and illness incidents must be recorded, and what information is to be included in each of the OSHA forms.

"These proposed recordkeeping updates will better enable OSHA, employers and workers to identify hazards in high-risk worksites," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "The proposed reporting revisions will enable OSHA to more effectively target occupational safety and health hazards, preventing additional injuries and fatalities." ◆

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