

National Labor Relations Board Orders Electronic Notice Posting, Compound Interest Moving Forward

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Last week, the National Labor Relations Board (NLRB or Board) issued two decisions that modify its standard remedial order in unfair labor practice cases. In *J. Picini Flooring*, 356 N.L.R.B. No. 9, the Board modified its standard notice-posting remedy to require employers and unions to post and distribute remedial notices electronically, in addition to posting a paper notice, if the employer or union customarily communicates with employees electronically. In *Kentucky River Medical Center*, 356 N.L.R.B. No. 8, the Board ordered that interest on back-pay awards be compounded daily.

While these decisions are significant in and of themselves, they reveal the current Board's willingness to impose additional remedies through case law adjudication, rather than rulemaking. The NLRB invited *amicus* briefs in both cases, but rejected arguments that these remedial changes should be imposed only through rulemaking. By issuing these decisions through its traditional adjudicatory process, the Board avoided difficult and time-consuming rulemaking procedures to address these issues.

Electronic Notice Posting and Email Distribution

The Board's standard notice-posting remedy requires the respondent employer or union to post a remedial notice for a period of 60 days "in conspicuous places including all places where notices to employees are customarily posted." For employers, this remedy has traditionally required posting of paper copies of the notice at fixed locations, usually on bulletin boards as well as near time clocks and department entrances.

In *J. Picini Flooring*, the Board modified its standard notice-posting remedy to specify that, in addition to physical postings, remedial notices should be posted electronically via the following methods:

- Posted on a respondent's intranet or Internet site, if the respondent customarily uses such electronic postings to communicate with its employees or members.
- Distributed by email (or any other electronic means), if the respondent customarily uses email (or any other electronic means) to communicate with its employees or members.

The Board overruled its existing precedent in *International Business Machines Corp.*, 339 N.L.R.B. 966 (2003), and *Nordstrom, Inc.*, 347 N.L.R.B. 294 (2006), and held that any questions concerning the propriety of electronic notice posting or email distribution should be resolved at the compliance stage. In compliance proceedings, an employer may present evidence about any peculiarities in its email, intranet,

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