

Update: NLRB Extends Suspension of Notice-Posting Requirements to Cases Involving Informal Settlement Agreements

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As we discussed [here](#), the National Labor Relations Board decided early this month that it would temporarily suspend the remedial notice-posting and emailing requirement at facilities shut down due to the COVID-19 pandemic until after reopening and a return of a “substantial complement” of employees. See [Danbury Ambulance Service, Inc.](#), 369 NLRB 68 (2020).

The *Danbury Ambulance* ruling addressed the posting obligation following the issuance of a Board decision in a contested unfair labor practice case. Normally, employers are required to post the Notice to Employees at the workplace within 14 days after issuance of a decision. The notice informs employees of the employer’s violation, assures them that the employer will not engage in such unfair labor practices in the future, and advises employees of their statutory rights to form, join or assist labor organizations and to engage in other activity for their mutual aid and protection. *Danbury Ambulance* did not address an employer’s notice-posting obligation pursuant to an informal settlement agreement approved by a Regional Director.

On May 20, NLRB General Counsel Robb issued a [memorandum](#) announcing that the same suspension of the notice posting obligation will apply to settled cases. Thus, if a place of business is either: (1) closed and a substantial number of employees are not reporting to the facility due to the COVID-19 pandemic, or (2) open and operating with less than a “substantial complement” of employees, then the 60-day notice-posting requirement will be suspended as described in the *Danbury Ambulance* decision.

The obligation to post a notice is postponed until 14 days after the facility involved reopens and a “substantial complement of employees have returned to work.” In cases where the settlement agreement requires, in addition to the traditional physical posting of the Notice to Employees on bulletin boards at the workplace, that the employer email the notice to the affected employees — because the employer customarily communicates with its employees by email — the General Counsel has directed that the notice be emailed as soon as the business reopens and should not be delayed until a substantial complement of employees have returned. “By doing this, the notice will be placed in employees’ email in-boxes awaiting their return.” These changes are temporary, but take effect immediately.

While the *Danbury Ambulance* decision did not define what constitutes a “substantial complement of employees,” the GC Memorandum filled that gap, defining “substantial complement” as at least 50% of the total number of employees who were employed at the facility, where the notice is to be posted, prior to the COVID-19 related closure.

As the NLRB navigates the “new normal” during the COVID-19 pandemic, our [team](#) will continue to monitor the important developments and update you as they occur.

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