

# NLRB Alters Timing Requirements for Electronic Notice Posting in Workplaces Impacted by COVID-19

**Labor Relations Update Blog** on June 3, 2022

In a [decision](#) issued on June 2, the National Labor Relations Board modified the timing of its electronic notice-posting requirement in circumstances where an employer has not yet reopened its facility due to COVID-19, or where a substantial complement of employees has not yet returned to work on-site when the employer “may be communicating with its employees by ‘electronic means’” (e.g., internet, intranet, email, etc.).

Prior to this decision, the Board temporarily suspended its standard remedial requirement that an employer must post a notice to employees at the involved facility within 14 days after the employer is served with the decision of an unfair labor practice, notifying employees of the employer’s violation and advising employees of their rights under the Act. For employers that were closed or where employees were not yet reporting to work, employers were not required to post physical notices or distribute electronic notices until 14 days after the involved facility reopened and “a substantial complement of employees ha[d] returned.”

Reasoning that “prompt posting of the notice by electronic means will best effectuate the purposes of the Act by providing employees with timely notice of the unfair labor practices and the steps the Respondent will take to remedy them” the Board has reverted to its previous standard requirement with respect to electronic notification. Now, the employer should again electronically notify its employees “within 14 days after service [of the unfair labor practice decision] by the Region.” In addition to electronic posting, the employer should also post physical notices within 14 days after the reopening and staffing of a “substantial complement of employees.”

As we discussed [here](#), the Board has not further defined what constitutes “a substantial complement of employees” in this context. That said, the substantial complement concept is frequently used by the NLRB as one of the factors determining whether a company is a “successor” employer under the Act. Based on this standard, the Board likely will consider whether a majority of the job classifications are filled and the operation is engaged in substantially normal production.

Characterizing its decision as one that “simply removes an unnecessary delay” in communication with employees, the majority gave little deference to certain Board Members’ concerns that the combined notice-posting period will likely now extend beyond the current-standard 60 days for certain employers. Notably, the Majority specifically stated its decision “makes notice posting for more than 60 days a standard remedy for a subset of employers, at least until the Board returns to its pre-pandemic notice-posting remedy.”

As always, we will keep you up to date on the latest developments in the post-COVID return to work landscape.

[View Original](#)

#### [Related Professionals](#)

---

- **Joshua S. Fox**  
Partner