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## Regulatory Comments of the National Restaurant Association

Also on behalf of:

**Alabama Restaurant Association**

**Arkansas Hospitality Association**

**Colorado Restaurant Association**

**Florida Restaurant & Lodging  
Association**

**Georgia Restaurant Association**

**Hawaii Restaurant Association**

**Indiana Restaurant Association**

**Iowa Restaurant Association**

**Kansas Restaurant & Hospitality  
Association**

**Louisiana Restaurant Association**

**Maine Restaurant Association**

**Restaurant Association of  
Maryland**

**Michigan Restaurant Association**

**Minnesota Restaurant Association**

**Mississippi Hospitality &  
Restaurant Association**

**Nebraska Restaurant Association**

**Nevada Restaurant Association**

**New Jersey Restaurant Association**

**New Mexico Restaurant Association**

**North Carolina Restaurant &  
Lodging Association**

**Ohio Restaurant Association**

**Oklahoma Restaurant Association**

**Pennsylvania Restaurant  
Association**

**Rhode Island Hospitality  
Association**

**South Carolina Hospitality  
Association**

**South Dakota Retailers Association**

**Tennessee Hospitality Association**

**Texas Restaurant Association**

**Utah Restaurant Association**

**Washington Restaurant Association**

**Wisconsin Restaurant Association**

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**ON:** PROPOSED RULES GOVERNING NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE  
NATIONAL LABOR RELATIONS ACT (RIN 31426 AA07)

**TO:** NATIONAL LABOR RELATIONS BOARD; SUBMITTED VIA FEDERAL RULEMAKING PORTAL:  
[HTTP://WWW.REGULATIONS.GOV](http://www.regulations.gov)

**BY:** ANGELO I. AMADOR, VICE PRESIDENT ó LABOR & WORKFORCE POLICY  
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**DATE:** FEBRUARY 22, 2011

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## **Introduction**

On behalf of the National Restaurant Association and the State Restaurant Associations listed above, we appreciate the opportunity to submit our comments on the notice of proposed rulemaking (the Proposed Rule) published on December 22, 2010 (75 Fed. Reg. 80,410). The Proposed Rule would require employers to post notices informing their employees of some of their rights under the National Labor Relations Act. **We urge you to withdraw the Proposed Rule from consideration for the reasons outlined below.**

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our mission is to help our members establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 960,000 restaurant and foodservice outlets employing 12.8 million people who serve 130 million guests daily. Despite being an industry of predominately small businesses, the restaurant industry is the nation's second-largest private-sector employer.

The Proposed Rule will be detrimental to both our members and their employees. While we support positive employer-union relations, the Proposed Rule would mandate the posting of both misleading information to employees and lead to miscommunication between workers and managers. The Proposed Rule would also continue to foment the current litigious environment that chokes, rather than promote, job creation. Furthermore, we agree with National Labor Relations Board (NLRB) Member Brian E. Hayes's view that the NLRB lacks the statutory authority to promulgate or enforce the [Proposed Rule]. In that regard, we incorporate herein by reference the entirety of the comments filed by the Coalition for a Democratic Workplace, which specifically outline the statutory and other legal deficiencies of the Proposed Rule.

Finally, last month, President Obama signed an executive order to try and improve our massive regulatory system, which stifles job creation. The executive order on "Improving Regulation and Regulatory Review," January 18, 2011, calls for a new regulatory system that promotes economic growth and job creation. The Proposed Rule goes counter to the spirit of his announcement and further promotes an atmosphere of uncertainty and litigation.

## **The Proposed Rule Would Mandate A Notice With Misleading Information**

Although the poster states that an employee may join a union to bargain collectively with the employer, it fails to mention that the same worker may bargain individually unless a union is involved. Individual bargaining may be difficult in a factory staffed by hundreds of employees, where an individual has limited contact with or influence over managers.

However, most restaurants have fewer than ten employees working at any given time, and the manager (or owner) usually works alongside other workers to keep wage expenses down. Contacting management is quick and easy in such a situation, and most managers develop good professional relationships with their workers. By not mentioning the employee's rights to bargain as an individual, the notice misleads employees into thinking that only a union can help them negotiate with management.

The notice that would be required by the NLRB also claims that it is illegal for employers to prohibit [workers] from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances. However, one of these special circumstances is a workplace dress code, which is required in most restaurants nationwide. A worker reading this notice would believe that they have the right to wear a union t-shirt and hat, instead of their work uniform, which would make them open to reprimand and even dismissal for violating the restaurant's dress code.

The proposed notice would also fail to mention that a union can demand fair share fees from individuals who exercise their rights and refuse to join the union. Even though a worker may legally refuse to pay for a union's political activities, they are still forced to pay up to 80% of regular union dues if a workplace is unionized. For workers and their families struggling to survive in this tough economy, union fees can be a serious issue.

### **The Proposed Rule Would Promote Our Current Litigious Environment**

The restaurant industry has low profit margins averaging only about from four to six percent. Thus, the cost of litigation— even what some may consider minor litigation— can drive a restaurant out of business or force it to let go of workers to cut costs. Requiring restaurants to post another notice on their walls makes them vulnerable to frivolous lawsuits. Although the NLRB has stated its intent to not criminally charge employers unless they knowingly fail to post the notice, state-level civil courts are not so forgiving. Small businesses are frequently harassed by such malicious tactics.

Due to the high cost of defending from even frivolous lawsuits— for which there is almost no chance of recovering attorneys' fees when the employer prevails— Restaurants often settle for thousands of dollars instead of fighting such claims in court. Thus, restaurants are vulnerable to small claims, and are targeted because of it. No matter the NLRB's intentions, this new requirement opens up another potential source of liability for employers even for unknowing violations.

### **Conclusion**

Once again, for the arguments regarding the lack of statutory or other legal authority for the NLRB to promulgate the Proposed Rule, we will rely on the issues raised in the Coalition for a Democratic Workplace submission incorporated into our comments by reference.

It is time for the federal government to get serious in its attempt to improve the regulatory system and the NLRB could start by withdrawing this legally dubious regulation.

Sincerely,



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