



MAY 2010

US Labor Department Publishes Rule Requiring Posting of Employee Rights

The Department of Labor issued its Final Rule on May 20, 2010 requiring federal contractors and subcontractors covered by President Obama's Executive Order 13496, Notification of Employee Rights under Federal Labor Laws, to post notices of their employees' rights under the National Labor Relations Act (NLRA). The NLRA is the primary law governing relations between unions and employers in the private sector and guarantees the right of employees to organize and to bargain collectively with their employers and to engage in other protected concerted activity with or without a union, or to refrain from all such activity.

Effective June 19, 2010, this rule requires all applicable federal contractors and subcontractors to include a provision obligating federal contractors and subcontractors to post the notices and to include the relevant notice posting requirements in every contract and subcontract.

Content of Notice

The required notice lists employees' rights under the NLRA to form, join, and support a union and to bargain collectively with their employer; provides examples of unlawful employer and union conduct that interferes with those rights; and indicates how employees can contact the National Labor Relations Board, the federal agency that enforces those rights, to ask questions or to file complaints. The US Department of Labor (DOL) has posted the notice on its Web site: http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf.

Contractors and subcontractors may also obtain a copy of the poster from (1) the federal contracting departments and agencies; (2) the DOL's Office of Labor-Management Standards (OLMS) at (202) 693-0123 or www.olms.dol.gov; (3) field offices of the DOL's OLMS or the Office of Federal Contract Compliance Programs (OFCCP).

Form of Posting

Contractors must post the notice in conspicuous places in and around their plants and offices where employees covered by the NLRA are likely to see it. In particular, contractors must post the notice where other notices to employees about their jobs are posted. Notices are required to be 11x17 inches or larger and in appropriate languages. If a contractor customarily posts notices electronically, it must likewise post the notice of NLRA rights where other employee notices are customarily placed on the employer's Web site. The DOL states that these electronic posting

requirements may be satisfied by prominently posting introductory language and linking this language to the DOL Web site that contains the full text of the notice:

http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf.

Electronic posting does not replace the physical placement requirement.

Exemptions

The posting requirements do not apply to prime contracts under the Simplified Acquisition Threshold, which is currently set at \$100,000, and do not apply to subcontracts below \$10,000. In addition, the requirements do not apply to government contracts for work performed exclusively by employees of US firms operating outside the United States and do not apply to employers with employees who are subject to the Railway Labor Act. Several less significant exceptions are also set forth in the final rules.

Compliance and enforcement procedures

The rule provides that employees may file complaints against contractors who do not comply with the Labor Department's posting requirements or do not include the notice provision in contracts and subcontract. The DOL's OFCCP is responsible for conducting compliance evaluations and investigations. Penalties for noncompliance, after a hearing, include canceling or suspending a contract, conditioning its continuance on a requirement for future compliance, or carrying out debarment.

This new final rule replaces the former Bush Administration's "Beck Notice" posting requirement, which explained employees' legal rights, as determined by the Supreme Court, not to become members of a union under facially compulsory union security provisions calling for union membership as a condition of initial or continued employment.

The final rules implementing Executive Order 13496 mark the first time that employers have been required to post a notice summarizing the full range of employee rights under the NLRA. For more information or if you have questions about training and employers' rights to communicate their own views regarding unionization, please contact a member of the firm's Labor Group:

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