

Government Contracts Alert: Department of Labor Issues Final Rule Requiring Federal Contractors to Post Employee Rights

5/27/2010

By [Jonathan T. Cain](#) and [C. Quincy Ewell](#)

Beginning on June 21, 2010, under a new rule published by the Department of Labor (DOL), certain federal government contractors and subcontractors will be required to conspicuously post notices, and include certain language in their contracts, informing their employees of their rights under the National Labor Relations Act (the “Final Rule”).¹

The Final Rule, published on May 20, 2010, implements Executive Order 13496, signed by President Obama on January 30, 2009, which requires nonexempt federal agencies to include within their government contracts specific provisions requiring contractors and subcontractors with whom they do business to post notices apprising their employees of their rights as employees under “federal labor laws.”²

Who Is Subject to the Employee Notice Rule?

The Final Rule applies to government contracts that are solicited on or after June 21, 2010, and exceed the simplified acquisition threshold of \$100,000. Subcontractors, whether at the first-tier level or below, with subcontracts of at least \$10,000, are also subject to the Final Rule, so long as the subcontract is “necessary to the performance of the prime contract.” The Final Rule does not affect existing government contracts, and therefore covered contractors and subcontractors are not required to amend current contracts to comply with the Final Rule.

The Final Rule exempts nonprofits and religious institutions, among others, from the notice requirement as well as government contracts under which the work is performed exclusively outside of the territorial United States.

Content of the Notice

The notice provides employees with general information regarding their rights under the National Labor Relations Act to:

- bargain collectively with an employer;
- organize, form, join, or assist a union;
- discuss terms and conditions of employment with workers or a union;
- engage in concerted activities with coworkers;
- strike and picket; and

- file a grievance if an employee believes that his or her rights have been violated.

The notice also provides examples of unlawful employer and union actions.

In addition to requiring covered contractors to post the employee notice, the Final Rule requires covered contractors to include the employee notice contract clause³ in nonexempt contracts and subcontracts. The contract clause, however, need not be quoted verbatim; instead, covered contractors are permitted to incorporate it by reference.

Posting the Notice

The Final Rule requires nonexempt contractors to post the employee notice in all places where the notices are customarily posted both physically and electronically. If physically posted, the notice must be in a “conspicuous” place “where employees engage in activities relating to the performance of the contract” and are likely to see it. Electronic posts must be prominent with a link to DOL’s website, where the full text of the notice can be found. The electronic notice must be labeled “Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers.”

Nonexempt contractors and subcontractors must provide the notice in languages that a “significant portion” of its workforce speak. A copy of the poster in English and in languages other than English may be downloaded from the Office of Labor-Management website at www.olms.dol.gov. Covered contractors may reproduce and use exact duplicate copies of the official poster.

Enforcement of the Employee Notice Requirement

The Final Rule authorizes the Office of Federal Contract Compliance Programs to audit covered contractors to determine compliance with the employee notice requirements. Additionally, the Final Rule also makes provision for employees of covered contractors and subcontractors to file noncompliance complaints against their employers. Contractors and subcontractors that are found in compliance may be subject to sanctions, including termination, cancellation, or suspension of the contract and debarment. Additionally, violators of the Final Rule may be declared ineligible for further government contracts.

Endnotes

¹ See Notification of Employee Rights Under Federal Labor Laws; Final Rule, 75 Fed. Reg. 97 (May 20, 2010) (to be codified at 29 C.F.R. pt. 471).

² Exec. Order No. 13496 (2009).

³ “During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the [NLRA] engage in activities relating to the performance of the contract...” Notification of Employee Rights Under Federal Labor Laws; Final Rule, 75 Fed. Reg. 97.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

Jonathan T. Cain
(202) 585-3508
JTCain@mintz.com

David Barmak
(202) 585-3507
DBarmak@mintz.com

Richard H. Block
(212) 692-6741
RHBlock@mintz.com

Micha “Mitch” Danzig
(858) 314-1502
MDanzig@mintz.com

James R. Hays
(212) 692-6276
JRHays@mintz.com

Donald W. Schroeder
(617) 348-3077
DSchroeder@mintz.com

C. Quincy Ewell
(202) 434-7349
QEwell@mintz.com