



LABOR & EMPLOYMENT DEPARTMENT

ALERT

EFFECTIVE JUNE 21, 2010, FEDERAL CONTRACTORS AND SUBCONTRACTORS MUST POST EMPLOYEE RIGHTS UNDER THE NLRA

By Andrez Carberry

On May 20, 2010, the U.S. Department of Labor (DOL) published final rule [29 CFR Part 471](#) implementing President Obama's [Executive Order 13496](#). Under the rule, effective June 21, 2010, all federal contractors and subcontractors at any tier with prime contracts of \$100,000 and above, or subcontracts valued at \$10,000 or above, must:

- Provide notice to employees of their rights under the National Labor Relations Act (NLRA); and
- Include the language of the notice by reference in contracts, subcontracts or purchase orders by citation to 29 CFR Part 471 Appendix A to Subpart A.

However, this new rule does not apply to:

- Collective bargaining agreements;
- Contracts that do not meet the above dollar thresholds;
- Contracts resulting from solicitations issued before the effective date of the rule;
- Contracts and subcontracts for work performed exclusively outside the territorial United States; and
- Employers not covered by the NLRA or the Railway Labor Act.

Posting Requirements for Covered Contractors and Subcontractors

Covered contractors and subcontractors are required to post the notice “[i]n conspicuous places in and about

the contractor’s plants and offices so that the notice is prominent and readily seen by employees. . .” and “[w]here employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract”

If a contractor traditionally posts employee notices electronically, the rule’s posting requirement is met by displaying prominently, on any web site maintained by the contractor or subcontractor and customarily used for providing notices to employees about terms and conditions of employment, a link to the DOL’s web site that contains the full text of the poster. However, the link must read, “Important Notice About Employee Rights To Organize and Bargain Collectively With Their Employers.” In addition, if the contractor’s workforce is not proficient in English, the contractor must provide the notice, physical or electronic, in the language the employees speak.

Enforcement and Penalties

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for conducting compliance evaluations and the Director of the Office of Labor Management Standards (OLMS) is charged with enforcing the rule, which may include:

- Directing the contracting agency to absolutely or conditionally cancel, terminate or suspend any contract or portion of a contract; and

- Issue an order of debarment against any non-complying contractor or subcontractor.

What This Means to Federal Contractors and Subcontractors

Contractors and subcontractors covered by the rule should expect increased inquiries from employees (union and non-union) about their “rights” under the NLRA, as well as new inquiries from the DOL regarding compliance with this rule. Such inquiries are likely, because the notice is very “union friendly” and provides several examples of rights protected under the NLRA, such as an employee’s right to organize, form, join or assist a union and to bargain collectively with employers. The notice also provides examples of employer conduct that is unlawful under the NLRA, and instructs employees to contact the National Labor Relations Board (NLRB) with questions or to file complaints.

Covered contractors and subcontractors must consult with counsel to review all federal contracts to determine if they are covered by this new rule. If covered, contractors and subcontractors must take the necessary steps to comply with the rule’s contractual and posting requirements. Contractors should also develop a proper training program to teach supervisors how to address and respond to employee inquiries about their rights under the NLRA.

For more information about this Alert, please contact Andrez S. Carberry at 212.878.7964 or acarberry@foxrothschild.com, or any member of our Labor & Employment Department. Visit us on the web at www.foxrothschild.com.



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