

Federal Contractors and Subcontractors Now Required to Notify Employees of Their Rights under Federal Labor Laws

Effective June 21, 2010, federal contractors and federal subcontractors must post notices informing employees of their rights under the National Labor Relations Act (NLRA) to organize and join a labor union, to bargain collectively, and to refrain from these activities. Federal government contracting departments and agencies must also include language in government contracts, subcontracts, and purchase orders regarding these notice obligations, and federal contractors must incorporate this language into subcontracts and purchase orders entered into in connection with any covered government contract. These requirements are summarized below and are set forth in detail in U.S. Department of Labor Regulations, 29 C.F.R. Part 471 (the Regulations), which implement Executive Order 13496.

What are the posting requirements?

The Department of Labor has prepared a poster containing the notice with the required information on employee rights under the NLRA. The [poster](#) can be downloaded for free.

Federal contractors and subcontractors who customarily post physical notices to employees must post the employee notice in conspicuous places so that the notice is prominent and readily seen by employees. The notice must be placed in areas where the contractor or subcontractor ordinarily posts notices to employees about terms and conditions of employment, including areas where employees covered by the NLRA do work relating to the federal contract.

In addition, federal contractors and subcontractors who customarily post electronic notices to employees must also post the required notice electronically. This obligation is satisfied by prominently displaying—on any website maintained by the contractor or subcontractor and customarily used for notices to employees about terms and conditions of employment—a [link](#) to the Department of Labor’s website that contains the full text of the employee notice. The text associated with this link must read as follows: “Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers.”

If a significant portion of the contractor’s or subcontractor’s workforce is not proficient in English, the contractor or subcontractor must provide the notice in the language the employees speak. The Office of Labor-Management Standards (OLMS) will prepare both physical and electronic versions of the employee notice in foreign languages.

Posting these notices, particularly in non-unionized settings, may provoke questions from employees concerning their rights under the NLRA and the issue of unionization in general. Federal contractors and subcontractors who are required to post notices under the Regulations should consider training supervisors and managers with respect to these issues, and should review their policies and procedures to ensure compliance with the NLRA.

What are the requirements for government contracts?

Government contracting departments and agencies must include certain prescribed language in every government contract, subcontract, and purchase order (each a “government contract,” and collectively, “government contracts”), other than those contracts to which exceptions apply (see below). The prescribed language need not be quoted verbatim and may be made part of the contract, subcontract, or purchase order by citation to “29 CFR Part 471, Appendix A to Subpart A.” Federal contractors and subcontractors must also include the prescribed language in every subcontract or purchase order entered into in connection with a government contract (unless an exception applies). Federal contractors and subcontractors should ensure that their covered government contracts contain the required language to avoid possible sanctions and penalties.

What exceptions apply to the requirements for government contracts?

The prescribed language for government contracts does not need to be included in any of the following contracts:

- Collective bargaining agreements;
- Prime government contracts for purchases below the “simplified acquisition threshold” set by Congress (currently \$100,000). Please note, however, that this exception does not exclude subcontracts under the simplified acquisition threshold if the subcontract is associated with a prime government contract that meets or exceeds the simplified acquisition threshold;
- Subcontracts of \$10,000 or less (so long as contractors and subcontractors are not procuring supplies or services to avoid the requirements of Executive Order 13496 and its Regulations);
- Government contracts resulting from solicitations issued before June 21, 2010; and
- Government contracts for work performed exclusively outside of the territorial United States.

The Director of OLMS may also exempt contracting departments or agencies from the requirements of Executive Order 13496 and its Regulations with respect to a particular contract or subcontract or any class of contracts or subcontracts.

What is the process for ensuring compliance?

The Director of the Office of Federal Contract Compliance Programs (OFCCP) may conduct a compliance evaluation to determine whether a contractor or subcontractor is complying with the requirements of Executive Order 13496 and its Regulations. An employee of a covered contractor or subcontractor may also file a complaint alleging a failure to post the employee notice. If a compliance evaluation or complaint investigation indicates a violation of the Executive Order or its Regulations, the Director of OFCCP will make reasonable efforts to secure compliance through conciliation. If a violation cannot be resolved through conciliation efforts, the matter will be referred to the Director of OLMS.

What sanctions and penalties may be imposed for non-compliance?

Administrative enforcement proceedings by the Director of OLMS may result in any of the following actions: (1) directing a government contracting agency to cancel, terminate, or suspend, any contract (either absolutely or conditioned upon compliance); or (2) issuing an order of debarment, providing that some or all contracting agencies must refrain from entering into further contracts or extensions or other modifications to existing contracts with the debarred contractor or subcontractor. The Director of OLMS will periodically publish and distribute to all executive agencies a list of the names of contractors and subcontractors that have failed to comply with Executive Order 13496 and its Regulations and, as a result, have been declared ineligible for future contracts.

What to do to ensure compliance?

Federal contractors and subcontractors can ensure compliance by posting the employee notice, consistent with their customary practices and in accordance with the requirements of the Regulations, and ensuring that (unless an exception applies) their government contracts, including any subcontracts and purchase orders entered into in connection with a government contract, contain the prescribed language.

Additional questions?

For more information on the requirements of Executive Order 13496 and its Regulations please contact [Diane B. Patrick](#), [Jessica E. Margolin](#), or your usual Ropes & Gray advisor.