

## WSGR ALERT

JULY 2010

# NEW FEDERAL CONTRACTS REQUIRE NOTICE OF UNION-ORGANIZING RIGHTS

As of June 21, 2010, employers entering into contracts with the federal government worth over \$100,000, or subcontracts of covered prime federal contracts worth over \$10,000, are required to conspicuously post a new notice prominently advising employees of their rights to organize and join unions under the National Labor Relations Act (NLRA). The NLRA is a 75-year-old law that protects employees who engage in union-related activity from adverse treatment by employers and regulates how employers and employees are permitted to interact in the context of union-related activity. Employers with any covered federal contractors or subcontractors that fail to post the new notice of employee union-related rights can face the termination or suspension of their federal contracts, debarment from future federal contracts, and have their names published on a public list of noncompliant companies.

The English-language version of the notice can be found by following the link below:

[http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17\\_Final.pdf](http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf)

### Background

On January 30, 2009, President Obama signed Executive Order 13496, "Notification of Employee Rights Under Federal Labor Laws," requiring that all federal government contracting departments and agencies include a provision in certain federal contracts requiring federal contractors to notify employees of their rights to participate in collective bargaining with an employer,

organize or join a union, discuss terms of employment with a union, or file a grievance with their employer if these conditions are not followed (NLRA provision). The Executive Order also charged federal contractors with including the NLRA provision in subcontracts necessary to perform covered prime contracts. On May 20, 2010, the Department of Labor's Office of Labor-Management Standards (OLMS) published the final rule implementing E.O. 13496, effective June 21, 2010 (DOL rule).

### NLRA Provision Requirement

The DOL rule requires federal government contracting departments and agencies to include the NLRA provision in federal contracts solicited on or after June 21, 2010, that exceed \$100,000. Federal contractors also must include the NLRA provision in subcontracts necessary to perform the prime contract that are equal to or greater than \$10,000. Covered contractors and subcontractors are permitted to incorporate the NLRA provision into contracts by reference.

### Notice Requirement

Under the DOL rule and NLRA provision, covered contractors and subcontractors must conspicuously post the specifically worded notice to employees, to let them know of their rights under the NLRA. Covered contractors and subcontractors can obtain a poster containing the notice from the OLMS website at <http://www.dol.gov/olms/>. Covered contractors and subcontractors that typically post notices to employees physically

must conspicuously post the notice required by the NLRA provision physically. Covered contractors and subcontractors that typically post notices to employees electronically must post the notice required by the NLRA provision electronically. Covered contractors and subcontractors can fulfill the electronic posting requirement simply by creating a link to the full text of the poster on the Department of Labor's website. The link must read: "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." The notices, whether physical or electronic, must be in English and any other language(s) the covered contractor's or subcontractor's employees predominantly speak.

### Notice Contents and Follow-Up Workplace Discussions

In explaining to employees their rights under the NLRA, the notice uses a number of examples of permitted employee and prohibited employer union-related conduct that could be perceived as pro-union. Some employees may even see the notice as signaling that the employer is suggesting unionization. Before posting the notice, employers should consider counseling managers regarding lawful strategies in responding to employee questions about union organizing, or even about union organizing itself. At a minimum, employers should carefully review the content of the notice with managers who may face questions concerning these topics from employees. Allegations of unfair labor practices under the NLRA often are made

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when untrained supervisors make either anti- or pro-union comments to employees who are discussing union-organizing topics at work. As this notice may well provoke some of those discussions, employers would be well-advised to provide some basic preventive education to managers.

### **Enforcement/Penalties**

The Office of Federal Contract Compliance Programs (OFCCP) is charged with ensuring that covered contractors and subcontractors comply with the DOL rule and NLRA provision,

and employees are further permitted to independently file noncompliance complaints with the OLMS or OFCCP. Noncompliance with the DOL rule and/or the NLRA provision can result in the termination, cancellation, or suspension of the covered contractor's or subcontractor's federal contracts. In addition, covered contractors and subcontractors violating the DOL rule or NLRA provision may be debarred from future government contracts.

For more information on the notice, the DOL rule, or the NLRA provision, please contact a member of the firm's employment law practice.



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