

LEGAL UPDATES

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Government Contractors Must Notify of Labor Law Rights Beginning June 21, 2010

Beginning June 21, 2010, federal government contractors are required to post notices of employee rights under the National Labor Relations Act, and to include language in government subcontracts concerning the notice. These requirements arise from final regulations implementing President Obama's Executive Order (E.O.) 13496, issued January 30, 2009.

E.O. 13496 states it is "designed to promote economy and efficiency in Government procurement." According to the E.O., "[r]elying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government's contracts." The E.O. requires government contractors and subcontractors to include a notice about Federal labor law rights in their contracts, and directs the Secretary of Labor to develop appropriate regulations. The E.O. also revoked President Bush's Executive Order 13201, which required the posting of what is known as the "Beck notice." The Beck notice had as its primary focus an employee's ability not to join a union; E.O. 13496, in contrast, has as its primary focus an employee's ability to join a union. Although no longer required to be posted, nothing in the new E.O. requires employers to remove the Beck notice.

The Department of Labor (DOL) issued final regulations implementing E.O. 13496 on May 20, 2010. The regulations set forth (1) the contents, size and publicity of the notice; (2) the language to be included in government contracts; and (3) the exceptions to the requirements.

Contents, Size and Publicity

The notice informs employees of their federal labor law rights, including the right to organize and bargain collectively, as well as to engage in protected

concerted activity. The notice sets forth examples of illegal conduct and provides contact information for the National Labor Relations Board. The 11" x 17" notice can be printed on 11" x 17" paper, or, if the larger printing is not possible, printing in a two-page, 11" x 8.5" format is acceptable, in which case the pages must be taped/pasted together. The notice must be physically posted in conspicuous places where it can be readily seen, including but not limited to where employee notices are customarily posted, and where employees perform contract-related work. If the employer posts employee notices electronically, the E.O. 13496 notice must also be posted electronically; alternatively, it is sufficient to include a link to the DOL website with the notice. The regulations contain additional requirements, for example, concerning the size and name of the electronic link to the notice.

Language for Contracts

Each covered contract and subcontract must contain either specified language (including the contents of the notice) or an incorporation by reference. The incorporation by reference citation is "29 CFR Part 471, Appendix A to Subpart A." The specified language guidelines can be found on pages 28399-28400 of the final rule.

Exceptions

Certain government contractors are not required to comply with E.O. 13496. For example, E.O. 13496 does not apply to prime contracts under the Simplified Acquisition Threshold (currently set at \$100,000) and does not apply to subcontracts below \$10,000. Additionally, state or political subdivision employers are not included. Finally, and importantly, the regulations do not apply to government contracts resulting from solicitations that were issued before June 21, 2010. This means that government contractors and subcontractors must begin posting the notice, and including the required language in their contracts, only when a new covered contract is entered into on or after June 21, 2010.

Sanctions

Possible sanctions for failure to comply with the notice requirement include suspension or cancellation of the contract, and debarment.

What This Means To You

If you are a government contractor or subcontractor, you must post the required notice and must include the required language in subcontracts. Failure to comply with the requirements may lead to severe consequences. Additionally, we anticipate that the posting of the notice will increase organizing activity, as well as NLRB charges and investigations.

Additional Information

The regulations provide many specific details not set out above. You can access the regulations in the final rule.

Contact Information

If you have any questions about this or other employment matters, please contact your Husch Blackwell Sanders attorney.

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