

# Labor Law Bulletin

## NLRA Rights Posting Requirement for Federal Contractors Effective June 21, 2010: Understanding the New Requirement and Explaining It to Your Workforce

It is official. As of June 21, 2010, federal contractors and subcontractors are required to post notices informing employees about their rights under the National Labor Relations Act (NLRA) and to include provisions in their subcontractor agreements that require vendors and service providers to adhere to the same posting requirement.

As reported in our February 12, 2009 Client Alert, President Obama issued Executive Order 13496, which requires certain contractors to post a notice in the workplace designed to inform employees of their rights under the NLRA. On May 20, 2010, the U.S. Department of Labor (DOL) issued final regulations implementing Order 13496, which makes the posting requirement mandatory as of June 21, 2010.

The notice, part of President Obama's labor-friendly policy agenda, contains union-titled language that informs employees about their rights under the NLRA to form, join and assist a union, and to bargain collectively. The notice gives examples of unlawful employer and union conduct that interferes with those rights and provides contact information for the National Labor Relations Board (NLRB), inviting employees to ask questions and file complaints. The poster and notice provisions may be downloaded from the DOL's Office of Labor-Management Standards (OLMS) website at: <http://www.olms.dol.gov>.

The regulations contain broad posting requirements, which require employers to put the new poster front and center where employees

talk and congregate. Covered employers must post the notice conspicuously in and around their plants and offices so that it is prominent and readily seen by employees. In particular, employers must post the notice where other notices to employees about their jobs are posted and where NLRA-covered employees perform work related to the contract, including "auxiliary work without which the contract could not be effectuated, such as maintenance, repair, personnel and payroll work." Covered employers must also post the notice electronically, if the contractor uses electronic communication as a method of posting to employees, and the DOL has specifically said that electronic posting does not serve as a substitute for physical posting. Significantly, the poster must be provided in other languages if the employer's workforce is not proficient in English.

There are several narrow exemptions from the posting requirement. Prime contracts under \$100,000 are not covered, nor are subcontracts under \$10,000. The DOL also excludes contracts where the work performed under the contract is performed exclusively outside of the United States. However, the vast majority of contractors covered by Executive Order 11246 will be required to meet this new posting requirement.

Contractors who fail to meet the posting requirement may be subject to sanctions, including suspension or cancellation of the contract. The regulations allow the Office of Federal Contract Compliance Programs (OFCCP) to initiate compliance reviews for this requirement alone or as part of a desk audit or on-site compliance audit

initiated under Executive Order 11246, which will include a review of whether the employer has met the electronic posting and subcontract language requirement. The regulations also provide a mechanism for employees, some of whom may be union organizers, to file complaints about an employer's failure to meet the posting requirement with the DOL.

Apart from ensuring compliance with the new posting and subcontract language requirements, proactive non-union or partially union employers should consider the impact of these new requirements on the company's union-avoidance planning and communication strategies. Although information about the NLRB and employees' rights to organize is easily available from public sources, the new posting requirement will put contact information for the NLRB and conspicuous information about an employee's right to organize and bargain collectively into high-traffic, high-visibility areas within your workplaces. Employers may want to consider taking steps to explain the posting to employees while addressing the company's union-free status and by conducting union-avoidance training with supervisors and managers.

**J. Kevin Hennessy** (Chicago) (312-609-7868) and **Lyle S. Zuckerman** (New York) (212-407-6964), Shareholders in the Firm's Traditional Labor Practice Group, along with **Patrick W. Spangler** (Chicago) (312-609-7797), a principal member of the firm's OFCCP Compliance Team, have been working with several employers to meet this new compliance requirement and to develop specific approaches toward communicating the posting to employees in the non-union setting. If you have any questions, feel free to contact either Kevin, Lyle or Patrick.

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