

Legal Alert: New Posting Requirements for Federal Contractors and Subcontractors

June 16, 2010

Beginning on June 21, 2010, federal contractors and subcontractors that enter into new federal contracts, subcontracts, or modifications to existing contracts will be required to post a detailed notice informing employees of their rights under the National Labor Relations Act. The U.S. Department of Labor recently published its final rules implementing Executive Order 13496, which requires the notice. See 29 CFR Part 471 ([Notification of Employee Rights Under Federal Labor Laws](#)). The regulations also indicate how and where the notice is to be posted and explain the consequences of failure to comply with the regulations.

Who Is Covered by Executive Order 13496

Executive Order 13496 covers contractors and subcontractors with contracts for the purchase, sale, or use of personal property or non-personal services, with only limited exceptions. Excluded are government contracts under \$100,000, subcontracts of \$10,000 or less, and contracts and subcontracts for work performed exclusively outside the territorial United States. Contractors and subcontractors excluded from the definition of “employee” in the NLRA are also not subject to the new requirements.

Notice Requirements

The DOL has posted the notice that covered employers must post: The [notice poster](#) advises employees of their right under the NLRA to form, join, and assist labor unions; to bargain collectively through a representative of their choosing; to discuss terms and conditions of employment with co-workers as well as unions; to strike, picket and engage in other forms of concerted activity along with their co-workers; and to refrain from engaging in any of these activities. The poster also lists examples of the types of actions by employers and by unions, i.e., unfair labor practices, which are prohibited by the NLRA.

The notice must be posted conspicuously in the employers’ facilities. The DOL’s rules require a copy of the notice to be posted at each location where the employer posts other required employee notices, and at each part of the facility where any employee covered by the NLRA performs work related to the contract or subcontract. If a covered employer customarily posts notices to its employees electronically, then the notice must be posted electronically as well. The electronic posting requirement can be met by displaying the notice prominently on the employer’s website or intranet (using the heading “Important Notice about Employee Rights to Organize and Bargain Collectively with Employers”), or by posting a link to the DOL’s website containing the full text of the notice.

Penalties for Non-Compliance

Employees or covered employers may report violations of the notice requirement; retaliation is prohibited. The Office of Federal Contract Compliance Programs (“OFCCP”) is responsible for investigating employee and other complaints alleging noncompliance with the Executive Order’s requirements. The OFCCP also will monitor compliance with the regulations when conducting compliance audits of affirmative action programs.

Penalties for violating the Executive Order may include cancellation, suspension or termination of the contract or subcontract, or debarment of the employer from future federal contracts or subcontracts, at least until it has demonstrated full compliance with the Order and rule. Any substantive violations of the provisions of the notice may amount to a violation of the NLRA, with its accompanying remedies.

Legal Alert: New Posting Requirements for Federal Contractors and Subcontractors (Continued)

The Office of Labor-Management Standards has published a Fact Sheet with information about the regulations. For more information about this Alert and to discuss strategies related to the new notice requirements, please contact a KMK Labor & Employment attorney.

KMK Legal Alerts are intended to bring attention to developments in the law and are not intended as legal advice for any particular client nor any particular situation. Please consult with counsel of your choice regarding any specific questions you may have.

ADVERTISING MATERIAL.

©2010 Keating Muething & Klekamp PLL. All Rights Reserved.