Cooley

May 21, 2010

Federal Government Contractors are required to post a new poster notifying employees that the National Labor Relations Act ("NLRA"):

- guarantees the right of employees to organize and bargain collectively with their employers;
- guarantees the right of employees to engage in other protected concerted activity and to refrain from union or other concerted activity; and
- protects employees from certain types of employer and union misconduct.

Included at the end of this *Alert!* is a copy of the new poster. A copy of the poster in English and in languages other than English may be downloaded from the Office of Labor-Management Standards website. The poster is designed to be printed on one sheet of 11-inch by 17-inch paper or two sheets of standard 8½-inch by 11-inch paper.

The poster must be posted "conspicuously" meaning that it is prominent and can readily be seen by employees. Contractors that customarily post notices to employees electronically must also post the required notice electronically by displaying it prominently on any website customarily used for notices to employees about terms and conditions of employment, or providing a link to the Department of Labor's ("DOL") website that contains the full text of the poster. The link to DOL's website must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." This information must be provided in the language employees speak if a significant portion of the contractor's workforce is not proficient in English.

The postings and notice requirements apply to Federal Government Contractors and to their subcontractors at any tier. These requirements do not apply to:

- prime contracts below $100,000;
- contracts resulting from solicitations issued before the effective date of the rule (30 days after May 20, 2010 publication in the *Federal Register*);
- contracts and subcontracts for work performed exclusively outside the territorial United States;
- subcontracts that do not exceed $10,000;
- contractors that are covered by the Railway Labor Act (RLA);
- contractors who are not covered by the NLRA; or
- collective bargaining agreements.

The poster is issued under a final rule published in the Federal Register on May 20, 2010, implementing Executive Order 13496: *Notification of Employee Rights Under Federal Labor Laws*. The Executive Order mandates that all government contracting departments and agencies include a provision in covered government contracts stipulating that the contractor inform employees of their rights under the NLRA by posting a notice "in all places where notices to employees are customarily posted both physically and electronically." This Executive Order revokes an earlier Executive Order issued by former President Bush which required federal contractors to post a notice to their employees informing them that they were not required to join or maintain membership in a labor union, and, where non-members of a union were nonetheless required to pay union dues, they could object to paying a portion of those dues or fees to support activities not related to collective bargaining, grievance adjudication or contract administration. The new poster includes a provision stating that an employee has the right to not join or not remain a member of a union that represents the employee's bargaining unit but no further discussion of individual rights.

In addition to specifying the notice content and to whom the requirement applies, the final rule provides for a complaint procedure, penalties, evaluations and enforcement of the notice requirement.

While the regulations require that a contracting agency include the posting requirement or a reference to the regulation (29 CFR Part 471, Appendix A to Subpart A) a best practice for covered contractors is to post the poster once they are awarded contracts based on solicitations issued on or after June 19, 2010.

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