

June 9, 2010

Federal Government Implements Pro-Union Notice Requirement for Government Contractors

Government contractors and subcontractors now have a new, unsavory obligation. On January 30, 2009, President Obama signed Executive Order 13496 – which requires government contractors and subcontractors to post a notice informing employees of their right to engage in concerted, collective activity. On May 20, 2010, the Department of Labor (“DOL”) issued its Final Rule to implement Executive Order 13496. The regulation includes (i) the size, form and content of the required notice and where it must be posted, (ii) the types of government contracts to which the Order applies (including those contractors and subcontractors required to post the notice), and (iii) the penalties that may be imposed in the event of noncompliance. The full text of the regulation is published [here](#).

Mandated Notice

The required notice contains great detail concerning employee rights under the National Labor Relations Act (“NLRA”), including rights to engage in concerted activity, to form a union and to bargain collectively with the employer, to “discuss [their] terms of employment with coworkers or a union; to join other workers in raising work-related complaints with [their] employer, government agencies, or members of the public; and to seek and receive help from a union subject to certain limitations.” The notice also includes examples of employer activities the NLRA prohibits. The required notice is heavily union-friendly, but buried within the notice is a short statement that employees have the right not to “do any of these activities.” The regulation requires that the notice be placed in “conspicuous places in and about each of the contractor’s establishments and/or construction work sites, including all places where notices to employees are customarily posted both physically and electronically.” Accordingly, if an employer regularly posts information to employees about work conditions on its internal or external Web site, then it must also post the mandated notice on its Web site.

Who is Required to Post

The Executive Order exempts government contracts involving purchases below \$100,000 [see 48 CFR § 2.101] and subcontracts of less than \$10,000. Contracts resulting from government solicitations issued before the effective date of the regulation are also exempt. All nonexempt contractors and subcontractors are required to include the employee notice contract clause in their nonexempt subcontracts. Thus, covered federal contractors and all non-exempt subcontractors that are “necessary to the performance of the prime contract” are required to post notice.

Stiff Penalties

If a government contractor fails to properly publish the required notice, its government contract(s) may be “cancelled, terminated, or suspended in whole or in part.” Moreover, failure to comply may render the contractor “ineligible for further government contracts” or blacklisted. The Secretary of Labor may issue an order debarbing the contractor “until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of the order.”

Conclusion

Covered government contractors and subcontractors must comply with this posting requirement as of June 21, 2010. If you have further questions regarding coverage or compliance with Executive Order 13496 and its implementing regulations, please contact one of the attorneys listed below:

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