

May 28, 2010

## **NEW POSTER REQUIREMENTS FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS**

**O**n May 20, 2010, the Department of Labor's Office of Labor Management Standards issued a final regulation implementing Executive Order 13496: "Notification of Employee Rights Under Federal Law." Pursuant to this final regulation, 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.

### **How is the New Poster Different than the Previous Poster?**

Under President Bush, federal contractors were required 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 not to join or remain a member a union that represents the employee's bargaining unit, but does not include any additional language discussing individual rights.

### **Am I Required to Post the New Poster?**

The posting and notice requirements apply to federal government contractors and to their subcontractors at any tier. The 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); or
- Contractors who are not covered by the NLRA.

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**Where Can I Get the New Poster?**

Covered employers may obtain the required poster from:

- The applicable Federal contracting agency;
- The Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210;
- Any Labor Department Office of Labor-Management Standards or Office of Federal Contract Compliance Programs; or
- By downloading it from the **Office of Labor-Management Standards Website** at [www.dol.gov/olms](http://www.dol.gov/olms).

**Where Should I Post the New Poster?**

The new poster must be displayed in all places where notices to employees customarily are posted both physically and electronically. If posted physically, the notice must be conspicuous and readily seen by employees who engage in activities relating to the performance of a government contract. If posted electronically, the notice must be prominent, must include a link to the DOL's website containing the full text of the notice, and must be labeled "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." Both physical and electronic notices must be provided in languages used by "a significant portion" of the contractor's or subcontractor's workforce. The DOL will provide translations of the required notice that satisfy the physical and electronic posting requirements.

**What If I Am a Covered Employer but Fail to Post the New Poster?**

The Director of the Office of Labor-Management Standards may direct a contracting agency to cancel, terminate, or suspend any contract for failure of the contractor to comply with its contractual provisions. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance. Additionally, an order of debarment may be issued.

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Executive Order 13496 is one of many labor and employment obligations to which government contractors and subcontractors are subjected. If you have any questions about Executive Order 13496, the final regulation, or any other government contracting issue, please contact an attorney at McMahon Berger, P.C.

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