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Client Bulletin #421

DOL ISSUES FINAL REGULATIONS REQUIRING FEDERAL CONTRACTORS TO POST "LABOR FRIENDLY" NOTICE

By Angelique Lyons
Port St. Lucie Office

The Department of Labor has issued Final Regulations implementing President Obama's **Executive Order 13496**. The regulations impose two requirements on government contractors and subcontractors: (1) to post a specified notice of employees' rights to join a union and engage in organizing activity; and (2) to include certain language in covered contracts and subcontracts. While the government calls the long-awaited Final Regulations "very, very balanced," the required Employee Rights Notice is unquestionably "labor-friendly." The new requirements go into effect on June 21, 2010.

The Employee Rights Notice

Under the new regulations, government contractors who have contracts that include the employee notice clause and are worth \$100,000 or more must post the Employee Rights Notice. In addition, all subcontractors who have contracts that include the employee notice clause and are worth more than \$10,000 must post the Employee Rights Notice at their worksites.

What does the Notice say?

The Notice specifically lists seven rights that employees have – six of those rights relate to joining unions and engaging in organizing activity. Only one of the enumerated rights states that an employee has the right not to join a union. Further, the Notice lists employer and union actions that are unlawful under the National Labor Relations Act, and tells employees how to report violations of the law.

Where can I get the Notice?

Employers **must** use the exact Notice as prescribed by the DOL. The Notice cannot be altered in size, color or content. The Notice can be obtained from the **DOL website**. Commercially available copies of the Notice in posters combined with other legal postings will be permitted, provided that the size, color and content of the Notice is not altered.

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Where do I post the Notice?

The Notice must be posted conspicuously in and around the employer's facility so that it is prominent and readily seen by employees. Specifically, the Final Regulations state that the Notice must be posted at each location where other notices to employees are posted **and** where employees covered by the NLRA perform activities relating to the performance of the government contract. Based upon this language, Constangy recommends that employers post the Notice in the following locations:

- * Wherever other government postings are located.
- * Wherever notices to employees of the terms and conditions of employment are located.
- * Each separate and distinct part of the facility (*e.g.*, manufacturing floor, packaging floor, warehouse, front office area).

What if I use electronic postings?

If an employer customarily posts notices to employees electronically, then the Employee Rights Notice must be posted electronically as well. To meet this obligation, the employer must prominently and conspicuously include the following language on its intranet or internet: "Important Notice about Employee Rights to Organize and Bargain Collectively with their Employers," along with a link to the DOL website that contains the full text of the poster. This language and the link should be included on the employer's intranet or internet in the same manner and location as other notices to employees.

What if my employees speak a language other than English?

If a "significant portion" of an employer's workforce speaks a language other than English, then the Notice must be provided in that language as well. The term "significant portion" is not defined; however, if the employer has translated other policies and notices into a language other than English, this Notice should also be offered in that language. The DOL intends to offer the Notice in several languages so that contractors will be able to meet this obligation without too much trouble.

What about my old Beck Posting?

Neither E.O. 13496 nor the Final Regulations specifically state that an employer cannot continue to display its old *Beck* Posting, and therefore employers can continue to display it should they choose to do so.

Required Contract Language

In addition to posting the Employee Rights Notice, contractors with covered contracts must include the employee notice clause in all subcontracts greater than \$10,000. The contract must contain either the entire language found in Appendix A to the Final Regulation or incorporate that language by specifically referring to *29 CFR Part 471, Appendix A to Subpart A*.

Penalties for Non-Compliance

During an OFCCP review or upon receiving a complaint, the government will review a covered contractor's com-

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pliance with both the posting and contract language requirements of EO 13496. If a contractor is found in violation of the Final Regulations, the government can initiate enforcement proceedings with penalties up to and including cancellation of the government contract(s) or debarment. Any substantive violations of the provisions of the Employee Rights Notice may constitute a violation of the NLRA and therefore will be referred to and adjudicated solely by the National Labor Relations Board.

Accordingly, Constangy urges all government contractors and subcontractors to review all contracts entered into after the effective date of the Final Regulations (June 21, 2010) and to immediately post the required Employee Rights Notice if they have any covered contracts. (Of course, contractors are free to post the Notice even if their contracts are not covered.) Contractors should also revise their covered subcontracts and purchase orders to include reference to the regulations. If you need assistance in implementing these requirements, please contact any member of Constangy's **Affirmative Action Practice Group** or the Constangy attorney of your choice.

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