

New Mandatory Posting for Government Contractors

LABOR: This is first time employers have had to place notice.

President Obama continues his support of big labor with a first of its kind mandatory employer posting requirement designed to advise employees how to form or affiliate with a labor union. If you are a federal contractor or subcontractor - or are thinking about becoming one - you will want to read about this important development.

Shortly after being sworn in, Obama signed a series of pro-labor executive orders. Though executive orders have the force of law, they are written by the President without any direct involvement of the Congress.

One of those orders was Executive Order 13496. This executive order requires federal contractors and sub-contractors to post a government notice informing employees of their rights under the National Labor Relations Act ("NLRA"), such as their right to form and join a union. While this seems innocuous, there are significant implications. Big labor is no doubt happy about the prospect that its ranks could be enlarged considerably as thousands of private sector workers employed under federal contracts receive information about how to form or join a union. This is the first time that a private sector employer has ever had to post such a notice.

Which contracts are covered?

On May 20, 2010, the United States Department of Labor ("DOL") published its final regulations implementing Executive Order 13496. Under the regulations, federal agencies must include a clause requiring employer posting of the new notice in all contracts for the purchase, sale, or use of personal property or non-personal services that are solicited on or after June 21, 2010, and are for an amount in excess of \$100,000. In addition, a prime contractor with a federal contract containing the clause must include the notice posting requirement in each of its sub-contracts where the amount of the sub-contract is in excess of just \$10,000.



EMPLOYMENT LAW

Richard Rosenberg

What does the notice say?

The required notice states that the NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. It also very generally states that employees covered by the

NLRA are protected from certain types of employer and union misconduct. Importantly, the notice clearly informs employees that they should contact the National Labor Relations Board ("NLRB") if they have any questions about specific rights that may apply to their particular workplace or if they wish to proffer so-called Unfair Labor Practice charges against their employer or the union.

Certain employee rights relating to union organizing are spelled out in the notice, including the right to join or assist a union, to bargain collectively through a representative of their choosing, to discuss the terms and conditions of employment with co-workers or a union, to engage in concerted activities with co-workers, to strike and picket, and to refrain from any of these activities.

Finally, the notice informs employees of certain employer or union practices that are illegal under the NLRA such as job threats for either engaging in union activity, asking employees about their union activity or sympathies or refusing to engage in union activity.

Where must it be posted?

The regulations require the notice to be posted in the covered employer's facilities in a conspicuous place where it will be readily seen by employees, including areas where the employer posts notices to employees about the terms and conditions of employment. If an employer normally posts notices to employees electronically, it must post the required notice electronically in addition to

posting it physically in the workplace. Further, where a significant portion of a contractor's workforce is not proficient in English, the contractor must also provide the notice in the language the employees speak.

How will the law be enforced?

Under the regulations, the DOL's office of Federal Contract Compliance Programs ("OFCCP") is authorized to conduct compliance evaluations to determine whether covered contractors and subcontractors are properly posting the employee notice. The regulations also authorize employees of a covered contractor or subcontractor to file a complaint with the OFCCP. If an investigation reveals non-compliance with the posting requirement, the OFCCP may refer the matter to the Office of Labor-Management Standards for the initiation of administrative enforcement proceedings. Unions wishing to organize a particular workforce will work hand in hand with the government to report and prosecute errant contractors.

Copies of the notice can be obtained from either the contracting agency or from the DOL. It may also be downloaded from the DOL's website at: http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster2page_Final.pdf.

Employers may reproduce and use exact duplicate copies of the Notice, and may use posters from commercial services that consolidate into one poster the new NLRA notice and notices required by other federal employment laws.

Employers covered by this regulation will want to become informed of their rights and responsibilities under the NLRA. This training is essential because this is a complex and nuanced area of law where many of the rules are counter-intuitive.

Richard S. Rosenberg is a founding partner of Ballard Rosenberg Golper & Savitt LLP, a management side labor law firm in Glendale. Rosenberg was recently selected as one of the 25 best lawyers in the San Fernando Valley. He may be reached at (818) 508-3700 or rrosenberg@brgslaw.com.