

New Labor Law Posting and Contract Clause Requirements For Federal Contractors

by Christine Nicolaidis Kearns, John E. Jensen and Karen-Faye McTavish

As of June 21, 2010, federal contractors and their subcontractors are required to post notices of their employees' rights under the National Labor Relations Act ("NLRA") to form, join or support a union and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from such activity, according to recent U.S. Department of Labor ("DOL") regulations implementing Executive Order 13496, signed by President Obama on January 30, 2009. In addition, federal contracts and subcontracts must include a specific provision requiring federal contractors and subcontractors to post the notice.

Federal contractors and subcontractors are required to post this notice in plants and offices where employees who are covered by the NLRA are performing any contract-related activity. The posting must be in all places where notices to employees are customarily posted. In addition, contractors and subcontractors who normally post notices to employees electronically are also required to post the notice electronically via a link to <http://www.dol.gov/olms/regs/compliance/EO13496.htm>.

Copies of the poster for physical posting can be obtained by calling the DOL Office of Labor-Management Standards ("OLMS") at 202.693.0123 or at <http://www.dol.gov/olms/regs/compliance/EO13496.htm> or by going to the field offices of OLMS or the Office of Federal Contract Compliance Programs ("OFCCP"). Where a significant portion of a federal contractor or subcontractor's workforce is not proficient in English, the contractor or subcontractor must provide the notice in the language(s) employees speak. OLMS will provide translations of the notice that can be posted physically and electronically.

The posting requirements do not apply to prime contracts under the Simplified Acquisition Threshold, which is currently set at \$100,000, and does not apply to subcontracts below \$10,000.

The OFCCP may conduct evaluations to determine compliance with these new posting requirements and will investigate complaints of noncompliance. OLMS will handle enforcement. Contractors who violate the

regulations may be subject to sanctions for non-compliance, including suspension or cancellation of an existing contract; debarment from future federal contracts and subcontracts; and inclusion on a list published and distributed by the Director of OLMS to all executive agencies listing the names of contractors and subcontractors deemed ineligible for future contracts as a result of non-compliance with these posting requirements. A contractor will have an opportunity for a hearing and an appeal before he imposition of any of these sanctions.

If you have any questions regarding the content of this alert, please contact the Pillsbury attorney with whom you regularly work or the attorneys below.

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