



News & Trending

PUBLICATIONS & ALERTS

ETRENDS - DEPARTMENT OF LABOR PUBLISHES FINAL RULE REQUIRING GOVERNMENT CONTRACTORS TO POST NOTICES REGARDING ORGANIZING RIGHTS OF EMPLOYEES

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Effective June 21, 2010, U.S. Government contractors and subcontractors entering into certain contracts must conspicuously post notices regarding union organizing rights under federal labor law. The sanctions, penalties, and remedies for noncompliance with the notice requirements include the suspension or cancellation of relevant government contracts and the debarring of U.S. Government contractors from future U.S. Government contracts.

The requirement applies to every new prime government contract (or contract modification) in excess of \$100,000, as well as any subcontract or purchase order related to such a contract in excess of \$10,000. See Exceptions to the Rule below. The rule implements Executive Order 13496 and was adopted by the Department of Labor's Office of Labor-Management Standards ("OLMS") and is codified at 29 CFR Part 471.

Obligations under the Rule

Federal contractors and subcontractors must "flow down" the E.O. 13496 provisions in all covered subcontracts or related purchase orders above \$10,000. The clause may be incorporated by reference by specifically referring to 29 CFR Part 471, Appendix A to Subpart A.

Federal contractors and subcontractors are required to post the required employee notice conspicuously in plants and offices where employees covered by the National Labor Relations Act perform "contract-related activity", including all places where notices to employees are customarily posted—both physically and electronically. Under the rule, a wide range of company functions, including indirect administrative services, may be deemed to be "contract-related activity". Accordingly, companies should carefully consider whether they may post the required notices in certain work areas but not others without risking complaint or investigation.

Form and Contents of the Notice

The prescribed notice informs employees of federal contractors and subcontractors of their rights under the National Labor Relations Act to organize and bargain collectively with their employers and to engage in other protected union activity. The required notice also provides examples of illegal conduct by employers and unions and contact information to the National Labor Relations Board. Employers generally are required to reproduce the prescribed notice verbatim. The posting must be 11 x 17 inches or larger. The rule does not explicitly prohibit an employer from posting a supplemental notice that informs employees of other rights under labor laws, such as the right to decertify an existing union, but it is foreseeable that such an action could invite an objection from affected interests.

The required notice can be downloaded from the [OLMS website](#).

Contractors and subcontractors who customarily post notices to employees electronically must also post the notice electronically by linking the poster to the Department of Labor web site that contains the full text of the poster. The link must read, “Important Notice About Employee Rights to Organize and Bargain Collectively with their Employers.”

Where a significant portion of a contractor’s or subcontractor’s workforce is not proficient in English, it must provide the notice in the language(s) spoken by employees.

Exceptions to the Rule

State and municipal governments are not required to post notices to employers under the rule, although the requirements must be “flowed down” in any applicable subcontract or purchase order. The rule also does not apply to government contracts for work performed exclusively by employees of U.S. firms operating outside the United States. The rule contains a mechanism for OLMS to process requests for exemptions on specified grounds.

The rule also does not apply to “Federally assisted contracts”, such as grants and loans of federal funds, the grant or donation of federal property and interests in property, the detail of federal personnel, the sale and lease of, and the permission to use (on other than a casual or transient basis), federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient.

The rule does not apply to federal contracts or modifications thereto resulting from solicitations issued before June 21, 2010.

Compliance Verification Procedures

Compliance verification is conducted by the Office of Federal Contract Compliance Programs (OFCCP). The verification will be a routine part of OFCCP’s on-site compliance evaluation of affirmative action programs. The verification will involve an on-site inspection of the postings, including electronic postings and review of a minimum of the last three contracts, subcontracts or purchase orders resulting from solicitations issued on or after June 21, 2010.

Practical Impact

Most companies will find compliance with the rule straightforward because the required notice can be downloaded from the OLMS website and posted in employee work areas adjacent other required postings. Companies will also need to flow down the contractual requirement in all subcontracts and purchase orders (of a value in excess of \$10,000) relating to prime government contracts that exceed the Simplified Acquisition Threshold.

The rule may cause employees to engage in more activities that they believe constitute protected activity under federal labor law. The notice was drafted by OLMS so it could be readily understood by employees and therefore omits many nuances of federal labor law. To the extent that the postings encourage employees to exercise

organizing rights or to engage in unprotected activity, it is likely that some companies will have questions regarding permissible responses or limits.

Please contact **Kimberly J. Korando** with any questions.

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