



Labor and Employment Law Information Memo

June 2010

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USDOL ISSUES RULE REGARDING NLRA POSTING REQUIREMENTS FOR FEDERAL CONTRACTORS

The United States Department of Labor (“USDOL”) recently published a final rule in the Federal Register, which requires covered federal contractors and subcontractors to inform employees of their rights under the National Labor Relations Act (“NLRA”). The final rule is effective June 21, 2010, and the corresponding regulations will be codified at 29 C.F.R. Part 471.

Under the final rule, federal agencies must include a clause in contracts for “personal property” and “non-personal services” requiring certain contractors and subcontractors with which they do business to post specific notices informing employees of their NLRA rights. This new posting requirement does not apply to prime contracts under the Simplified Acquisition Threshold of \$100,000 or to subcontracts below \$10,000. Additional exemptions are also set forth in the final rule. These exemptions include: (1) government contracts resulting from solicitations issued prior to the effective date of the final rule; and (2) contracts and subcontracts for work performed exclusively outside the territorial United States. The Director of the USDOL’s Office of Labor-Management Standards may also grant exemptions to this requirement under certain circumstances.

The final rule implements Executive Order (“E.O.”) 13496, which President Obama signed on January 30, 2009. E.O. 13496 repealed a previous notice requirement, known as the “Beck Poster,” and prescribed new notice requirements which are codified in the final rule. In contrast to the former Beck Poster (which informed employees of their rights to not join a union and to opt out of paying a portion of their union dues used for non-representational activities), the new rule requires that employees be informed, among other things, of their rights to organize and bargain collectively and to engage in other protected concerted activity under the NLRA. In addition, the notice must provide examples of illegal employer conduct and information on where employees may file complaints with the National Labor Relations Board.

The final rule also specifies that covered entities must post the new notice in “conspicuous places in and about the contractor’s plants and offices so that the notice is prominent and readily seen by employees.” Conspicuous placement includes, but may not be limited to, areas where contractors and subcontractors post other employee notices regarding terms and conditions of employment. The notice must also



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be posted where covered employees “engage in activities relating to the performance of the contract.” Contractors and subcontractors who post employee notices electronically must also post the new notice in the same manner, subject to specific electronic posting requirements. Electronic posts cannot be used as a substitute for physical posting. USDOL has published on its website a copy of the new NLRA poster, which can be found at http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster2page_Final.pdf.

If you have any questions about whether your organization is covered by this new requirement or need additional information about this new requirement, please contact:

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Announcing New HR Blog

www.nylaborandemploymentlawreport.com

Bond, Schoeneck & King’s Labor and Employment Law, Employee Benefits and Executive Compensation, and Immigration Law Practice invites you to subscribe to our new Labor and Employment Law Blog via RSS feed/email alert.

BS&K recently launched the first management-focused online blog dedicated to labor and employment law issues in New York State. The New York Labor and Employment Law Report is dedicated to current issues affecting both large and small employers with operations in New York State. Current blog postings include:

- New York City Employers Are Strictly Liable for Harassment or Discrimination by Supervisors
- New NLRA Posting Requirements for Federal Contractors
- IRS Guidance Addresses Tax Treatment Of Health Care Benefits Provided To Adult Children
- An Eye On New York Workplace Bullying Legislation
- New York Legislature Could Legally Enact A Wage Freeze For Public Sector Employees
- Not Just Any Release Will Do: Drafting Valid Releases for a Reduction-in-Force
- Make Sure Your Unpaid Interns Are Not Employees
- Federal Appeals Court Concludes Performance-Based Demotion Does Not Violate the FMLA

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