Federal Contractors Must Post New Employee Rights Poster

Insights
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A new rule issued May 20, 2010, requires federal contractors and sub-contractors to provide employees notice of their rights under the National Labor Relations Act. This rule implements President Obama's Executive Order 13496, signed early last year.

The Order has two requirements for covered federal contractors and sub-contractors: 1) post (along with other employee notices), including electronically, the "Employee Rights under the National Labor Relations Act" poster and 2) include the language of the employee notice requirement in all contracts.

- **When is this effective?** June 21, 2010
- **Who must comply?** Federal contractors and sub-contractors unless the prime contract is less than $100,000 or the sub-contract is below $10,000
- **Who enforces this law?** Office of Federal Contract Compliance Programs (OFCCP) and Office of Labor-Management Standards (OLMS), both US Department of Labor agencies
- **Where must the poster be posted?** Everywhere other notices to employees about their jobs are posted. If the employer posts notices to employees electronically, the employer must also post the required notice electronically via a link to the OLMS website, placed in a comparable location at the same level of "conspicuousness" as other employee notices. Electronic posting may not be a substitute for physical posting.
- **What if employees have limited English proficiency?** OLMS will provide translations that can be used to comply with the physical and electronic posting requirements where a significant portion of the workforce is not proficient in English. If that is the case, the employer must provide the employee notice in languages spoken by the employee.
- **What contract notice language must be used?** The employee notice may be incorporated by reference in contracts, sub-contracts or purchase orders by citation to 29 cfr Part 471 Appendix A to Subpart A.
- **What employer resources are available?** OLMS has issued a press release, Fact Sheet, and has a copy of the poster itself available on their website.

The US Department of Labor received 86 comments to its proposed rule and made some changes in the final rule in response to those comments. Although the modifications were an attempt to create a

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more balanced document, the final poster still appears biased in favor of union organizing. For example, the preamble to document states: "The NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity." The preamble fails to include language that the employees have the corresponding right to *refrain* from these activities.

Later in the document, seven bullet points enumerate NLRA rights, and, in that section, employees are told they do have the right to "choose not to do any of these activities, including joining or remaining a member of a union." Employees are not given any suggestion, except for that brief reference, that they have a right to decertification.

In the proposed rule, the document would have enumerated seven examples of illegal employer actions with one example of an illegal union action. The poster as it appears in final form retained the seven examples of illegal employer conduct and added four examples for illegal union conduct, in a purported attempt at fairness. For example, employees are informed that they "may inquire about possible violations without your employer or anyone else being informed of the inquiry." Conspicuously absent from the notice is the employee's right to seek decertification, the right to abstain from union membership in right-to-work states and the right for many employees to seek reimbursement of a portion of union dues or fees not used for collective bargaining, contract administration or grievance adjustment under the *Communication Workers v. Beck* case.

The rule does not prohibit employers from posting their own notices to provide some of the omitted information; however, employers that choose to do so should work carefully with labor counsel to ensure the information meets the legal requirements.

For more information, or specific advice applicable to your workplace, contact your regular Fisher Phillips attorney.

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