

ADMINISTRATION SAYS TO ORGANIZED LABOR: "WELCOME BACK TO THE WHITE HOUSE."

Almost 14 months after President Obama signed several executive orders governing the labor relations of federal contractors, the Department of Labor issued a final rule implementing Executive Order 13496 and a Notice of Proposed Rulemaking to implement Executive Order 13495. Each of these orders reverses policy previously enacted by former President George W. Bush. The Executive Orders discussed in this article require federal service contractors to offer continued employment to workers already on the job as employees of a predecessor federal contractor and require conspicuous posting of federal labor laws in federal contractors' and subcontractors' workplaces.

While announcing the signing of the Executive Orders, President Obama also announced the creation of a "Middle Class Task Force" and stressed his view of the importance of the labor movement in strengthening the middle class. In front of a large audience, which included several labor leaders, the head of the task force, Vice-President Joe Biden told the audience, "Welcome back to the White House," foreshadowing dramatic changes in federal labor policy.

Executive Order 13495

Earlier this year, the Department of Labor issued a Notice of Proposed Rulemaking to implement Executive Order 13495. The order, entitled "Nondisplacement of Qualified Workers Under Service Contracts," mandates that a federal contractor or subcontractor¹ taking over a federal service contract covered by the Service Contract Act of 1965 offer employees of the predecessor contractor continued employment at the same location. The order reinstates a similar order implemented by President Clinton and later rescinded by President Bush in 2001.

The requirement applies only to non-managerial and non-supervisory employees who worked for the predecessor contractor for at least three months and who would not otherwise be laid off or discharged. Successor contractors remain free to determine how many employees are required to perform the contract, and to use fewer employees than the predecessor. Offers of employment to the predecessor's employees must remain open for at least 10 days.

There is no private right of action to enforce the order. Instead, claimants must file an administrative complaint with the contracting agency within 120 days of the alleged violation or with the DOL within 180 days of the alleged violation. Penalties for failing to adhere to the order include orders requiring the contractor to extend offers of employment to predecessor employees, payment of back pay, and/or contract debarment for violations found to be "willful or aggravated".

Executive Order 13496

Under a new Department of Labor ("DOL") regulation published May 20, 2010, effective June 21, 2010, federal contractors² must post notices informing employees of their rights under the National Labor Relations Act (NLRA) to organize and join a labor union, to bargain collectively, or to refuse to participate in these activities. The new DOL regulation also requires federal government contracting departments and agencies to include language in government contracts, subcontracts, and purchase orders regarding these notice obligations. All contractors must incorporate this language into subcontracts and purchase orders entered into in connection with any covered government contract. These requirements are summarized below and are set forth in detail in U.S. Department of Labor Regulations, 29 C.F.R. Part 471, which implement Executive Order 13496.

Posting Requirements:

The DOL has prepared a poster containing the notice with the required information on employee rights under the NLRA. The poster can be downloaded for free here <http://www.dol.gov/olms/regs/compliance/E013496.htm>.³

The contractor must post the notice in conspicuous places so that it can be readily seen by employees. In particular, it must be placed in areas where the employer generally posts notices to employees about terms and conditions of employment, including areas where employees covered by the NLRA perform work relating to the federal contract. If the contractor customarily posts electronic notices to employees, the contractor also must post this notice electronically. This obligation is satisfied by prominently displaying a link to the Department of Labor's website that contains the full text of the employee notice on any website ordinarily used for employee notices. To constitute adequate notice, the text of the link must read as follows: "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

The posting of these notices likely will provoke questions from employees concerning their rights and unionization in general. In advance of the June 21 deadline for posting these notices contractors should review their policies and procedures to ensure compliance with the NLRA and consider training supervisors and managers with respect to these issues.

¹This article will refer to federal contractors and subcontractors collectively as "federal contractor" or "contractor".

²Banks and other financial institutions with 50 or more employees are deemed "Federal Contractors" under the law by virtue of holding treasury tax or loan accounts, handling saving bonds, and acting as government depositories.

³If a significant portion of the contractor's workforce is not proficient in English, the contractor must provide the notice in the employees' native language. The Office of Labor-Management Standards (OLMS) will prepare both physical and electronic versions of the employee notice in foreign languages.

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