

Executive Order on Notification of Employee Rights Potentially Grants Broad New Powers to DOL Secretary

Vague Provision Required in All Federal Contracts Creates Potential for Debarment of Federal Contractors for Labor Law Violations

On August 3, 2009, the Department of Labor issued proposed regulations on President Obama's Executive Order 13496 entitled "Notification of Employee Rights Under Federal Labor Laws," which requires federal contractors to post notices in the workplace (reprinted on page two of this Policy Brief) advising employees of certain rights under the National Labor Relations Act (NLRA) pursuant to a new contract provision in all federal contracts. The executive order has been portrayed as a mere notice-posting requirement that will do nothing more than ensure that employees are aware of their right to engage in union related activities. However, the precise wording of the notice and contract provision creates a potential for a much broader impact in which a contractor could be deemed to violate the mandate not only by failing to post the "Secretary's Notice" but also by infringing on a right contained in the notice. If this interpretation is true, contractors could be debarred from receiving further federal contracts based on violations of federal labor laws.

Posting Requirement The executive order and the proposed regulations require that all federal contracts include a new contract clause requiring contractors, including prime and subcontractors, during the term of the contract to post the "Secretary's Notice" in the workplace intended to ensure that employees are "well informed of their rights under the federal labor laws, including the National Labor Relations Act." Contractors must post the notice in each of the employer's locations where NLRA-covered employees are performing contract work.

Compliance by Employer Section 2 of the prescribed contract clause obligates contractors to "comply with all provisions of the Secretary's Notice, and related rules, regulations, and orders of the Secretary of Labor." (Emphasis added.) In contrast, the Bush Administration's Executive Order 13201 requiring the posting of a notice of employee's *Beck* rights contained a similar contractual provision except that it required contractors to "comply with all provisions of Executive Order 13201 of February 17, 2001, and related rules, regulations, and orders of the Secretary." Thus, the Secretary could impose a much broader range of requirements beyond merely posting the Notice, such as the contractor's compliance with union organizing rights and rules as set forth in the Notice's provisions.

Potential Debarment for Violations The enforcement provisions are modeled after those of the *Beck* executive order. Under the terms of the executive order and the prescribed contract clause, a violation of either section 1 or 2 of that clause may result in the contract being cancelled, terminated, or suspended in whole or in part. The Office of Federal Contract Compliance Programs (OFCCP) is empowered to investigate and conduct hearings on alleged violations of the contract provision, including complaints that may be filed by employees. If the Secretary determines a violation has occurred, he or she may, after consulting with the contracting department, order termination of the contract as well as debarment from further contracts until the contractor is in compliance. The Secretary would also publish the names of contractors found to be in violation and such contractors would be barred from working under future federal contracts.

NOTICE TO EMPLOYEES

RIGHTS OF EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT

“It is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.

“Under federal law, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through a duly selected union for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your terms and conditions of employment with your co-workers or a union; join other workers in raising work-related complaints with your employer, government agencies, or members of the public; and seek and receive help from a union subject to certain limitations.

Take action with one or more co-workers to improve your working conditions, including attending rallies on non-work time, and leafleting on non-work time in non-work areas.

Strike and picket, unless your union has agreed to a no-strike clause and subject to certain other limitations. In some circumstances, your employer may permanently replace strikers.

Choose not to do any of these activities, including joining or remaining a member of a union.

“It is illegal for your employer to:

Prohibit you from soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas.

Question you about your union support or activities.

Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in other activity for mutual aid and protection, or because you choose not to engage in any such activity.

Threaten to close your workplace if workers choose a union to represent them.

Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances, for example, as where doing so might interfere with patient care.

Spy on or videotape peaceful union activities and gatherings or pretend to do so.

“It is illegal for a union or for the union that represents you in bargaining with your employer to: discriminate or take other adverse action against you based on whether you have joined or support the union.

“If your rights are violated:

Illegal conduct will not be permitted. The National Labor Relations Board (NLRB), an agency of the United States government, will protect your right to a free choice concerning union representation and collective bargaining and will prosecute violators of the National Labor Relations Act. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits and may order an employer or union to cease violating the law. The NLRB can only act, however, if it receives information of unlawful behavior within six months.

“If you believe your rights or the rights of others have been violated, you must contact the NLRB within six months of the unlawful treatment. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's website: www.nlr.gov.

"Click on the NLRB's page titled "About Us," which contains a link, "Locating Our Offices." You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

“This is an official Government Notice and must not be defaced by anyone.