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**The U.S. Department Of Labor Proposes Regulations Requiring Federal
Contractors To Post Notices Informing Employees
Of Their Right To Join A Labor Union**

An Executive Summary for Employers¹

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In a move welcomed by pro-labor groups, the U.S. Department of Labor has proposed regulations that would implement an Executive Order (Order No. 13496) signed by President Barack Obama that requires private-sector government contractors to post a notice advising employees of their right under the National Labor Relations Act to organize and join a labor union.² The Executive Order, issued by the President on January 30, 2009, reverses a Bush administration policy that required government contractors to inform employees of their right under federal law not to be compelled to join a labor union or to contribute agency fees to support union activities unrelated to collective bargaining.³

According to its language, the Order was designed “to promote economy and efficiency in Government procurement,” stating that, “[w]hen the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers’ productivity is enhanced when workers are well informed of the rights under Federal labor laws, including the National Labor Relations Act...”

The proposed regulations apply to all private-sector⁴ federal contracts or subcontracts unless excepted. (Excepted contracts include collective bargaining

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² To see the proposed regulations click on the following link:
<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=22984>

³ “Agency fees” are those fees that can be required by a union in lieu of membership dues on the part of employees who decline union membership.

⁴ See note 6, *infra*.

agreements and those that fall below the simplified acquisition threshold of \$100,000.⁵ As currently proposed, however, *subcontracts* that fall below the simplified acquisition threshold are not excepted.)

The proposed regulations require all Government contracting departments and agencies to include provisions in every non-excepted Government contract to the effect that:

- the contractor agrees to post a notice “of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices” where employees *covered by the National Labor Relations Act*⁶ engage in activities relating to the performance of the contract;
- the contractor will comply with all provisions of the Secretary’s Notice, and related rules, regulations and orders of the Secretary of Labor;
- the contract is subject to cancellation, termination or suspension, and the contractor may be declared ineligible for further Government contracts in the event of non-compliance;
- the contractor will include the above provisions in every subcontract [unless excepted] entered into in connection with this contract, so that the provisions become binding on each subcontractor.

A copy of the notice that is required to be posted follows below. The notice must be posted physically - and contractors who typically provide notices to employees electronically must also post the notice electronically.

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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

⁵ “Simplified acquisition threshold” means the dollar amount set by Congress under the Office of Federal Policy Procurement Act, currently set at \$100,000.

⁶ The NLRA excludes “the U.S. Government or any wholly owned government corporation” from the definition of “employer.” Thus, by its terms, the Executive Order provides that the employee notice that it requires must only be posted by (non-excepted) employers in the private sector, and need not be posted by public-sector employers.

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 web site: 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.

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The Department of Labor has invited all interested parties to submit comments on the proposed rule on or before September 2, 2009. If you are not sure whether you are a covered employer, or if you have any questions about the regulations themselves, please feel free to call us. Our attorneys will be happy to answer your questions.