

AFFIRMATIVE ACTION UPDATE

** NEWS FLASH **

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CONTRACTOR'S REQUIREMENT TO NOTIFY EMPLOYEES OF THEIR ORGANIZING RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT – FINAL REGULATION

The DOL has finalized the regulation implementing Executive Order 13496 signed by President Obama back on January 30, 2009. EO 13496 and the implementing regulation require federal contractors and subcontractors to post notices in their workplace notifying employees of their right to organize for the purpose of collective bargaining under the National Labor Relations Act.

The regulation, which become effective June 21, 2010, apply to contracts of more than \$100,000 and entered into after the effective date. It also applies to subcontracts “necessary to the performance of the prime contract” of more than \$10,000. Contractors and subcontractors subject to the regulation must post notices in the workplaces where work related to the covered contract is being performed. The notices **MUST BE POSTED IN THE EXACT MANNER AND FORM AS SPECIFIED IN THE REGULATION.** Copies of the notices are available at:

<http://www.dol.gov/olms/regs/compliance/EO13496.htm>

In regard to the actual act of posting, the Department of Labor's Office of Labor-Management Standards (OLMS) states:

PHYSICAL AND ELECTRONIC POSTING

Contractors and subcontractors must post the employee notice conspicuously in and around their plants and offices so that it is prominent and readily seen by employees. In particular, contractors and subcontractors must post the notice where other notices to employees about their jobs are posted.

Additionally, contractors and subcontractors who post notices to employees electronically must also post the required notice electronically via a link to the OLMS website. When posting electronically, the link to the notice must be placed where the contractor customarily places other electronic notices to employees about their jobs. The link can be no less prominent than other employee notices. Electronic posting cannot be used as a substitute for physical posting.

In addition to the posting requirement, contractors are also required to include a contract clause in all covered contracts and subcontracts. However, as with the other required EEO clauses, the required notice can be included by reference. Covered purchase orders and contracts related will have to be revised to include a reference to “29 C.F. R Part 471, Appendix A to Subpart A.”

The regulation provides that the OFCCP may either use a regular compliance review or may conduct a review solely for the purpose of verifying compliance with the regulation. Complaints regarding non-compliance can be filed either with the OFCCP or the OLMS. Sanctions for non-compliance can be as harsh as debarment.

If there are any questions or comments concerning anything contained above, they can be directed to this office at the address shown above, by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. This discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.