

# New Posting Requirements for Federal Contractors

## Poster and Subcontractor Notification Change

Recently, the Office of Labor-Management Standards (OLMS) issued a final rule implementing the provisions of President Obama's Executive Order (EO) 13496. This regulation rescinded EO 13201 and replaced it with a broader obligation requiring federal contractors to inform their employees of their rights under the National Labor Relations Act. The rule will be effective June 21, 2010 and will expire on May 31, 2013 unless renewed.

The final rule requires federal contractors and subcontractors to post employees' rights to form, join and assist a union, and to bargain collectively with their employer, regardless of current union or non-union status. During the term of the contract, the notice will be posted in conspicuous places in plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically.

The posting requirements do not apply to prime contracts under the Simplified Acquisition Threshold, which is currently set at \$100,000; to subcontracts below \$10,000; or to contracts where work is performed exclusively outside the United States.

The final rule also states that prime contractors are required to monitor subcontractor's compliance with the posting rule. Currently a clause in federally connected subcontracts and purchase orders requiring subcontractors and vendors to post the notice suffices for this requirement, however this may change based on agency enforcement procedures. Fortunately, the prime contractor will not be liable for a subcontractor's compliance if the prime contractor diligently sought subcontractor compliance but the subcontractor failed to comply.

New Posting Requirements for Federal Contractors Employees may file written complaints to the OFCCP or OLMS. OFCCP is responsible for investigation of complaints, compliance evaluations, conciliation, and recommendations for enforcement. Similar to the way I-9 violations discovered during compliance reviews are passed to Immigration and Customs Enforcement, OFCCP will refer any violations found to the OLMS for enforcement.

*“Contractors need to include a new poster with employee notices and update their subcontractor notification clause.”*

Contractors that violate this regulation may be subject to sanctions, including suspension or cancellation of currently held contracts and debarment from future contracts and subcontracts. The contractor, as well as the contracting agency, will have an opportunity for a hearing or an appeal before any sanctions are imposed.

Contractors are encouraged to post the attached notice with their paper and electronic notices at all locations where Federal contract work is performed, beginning on June 21, 2010 or with an award of a contract with the revised union notification clause. In addition, the affirmative action notice used in purchase orders should be revised to read as follows:

**Affirmative Action Notice:** vendors and subcontractors are notified that they may be subject to the provisions of: 29 CFR Part 471 Appendix A; 41 CFR Section 60-1.4(c); 41 CFR Section 60-250.4 and/or Section 60-300.5; and 41 CFR Section 60-741.5 with respect to affirmative action program and posting requirements.

To view the Department of Labor's NLRA Employee Rights poster, [click here](#).

If you have any questions regarding this new posting requirement, please contact your Berkshire representative at 800.882.8904.