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24 LRW 798

Employee Rights

OLMS Releases Final Rule Covering NLRA Rights Poster for Federal Contractors

The Labor Department's Office of Labor-Management Standards is set to release a final rule in the May 20 *Federal Register* providing details on the poster that federal contractors and subcontractors must display informing their employees of their rights under the National Labor Relations Act.

Federal contractors and subcontractors will be required to post at their workplaces a prescribed notice that lists employees' rights under the NLRA, which governs the right of employees to form unions, to engage in specified protected concerted activity with or without a union, and to refrain from all such activity.

John Lund, deputy assistant secretary for the Labor Department's Office of Labor-Management Standards, told BNA that the rule has language that "is very, very balanced." Lund stressed in a May 14 interview that the poster lists unlawful union activities, including threats by a union not to process a grievance or to cause a worker to lose his job if he does not support the union.

When the rule was proposed in August 2009, some observers were concerned that the notice would inform workers of their rights to join a union but would not inform them of their right not to join a union (23 LRW 1642, 10/15/09).

The previous version of the poster, known as the Beck poster, required federal contractors to post workplace notices informing their employees of their right not to join a union under *Communications Workers of America v. Beck*, 487 U.S. 735, 128 LRRM 2729 (1988). President Obama's Executive Order 13496 rescinded that poster and provided the text of a clause that would require specified types of federal contractors to conspicuously post a notice informing their employees of their rights under federal labor laws (23 LRW 516, 4/2/09).

Online Postings

Lund said the new poster includes a notice about a worker's right to choose not to join or remain in a union. Online postings of the notice should provide links to the OLMS website.

The poster measures 11 inches by 17 inches and is designed to be downloaded from DOL's website onto one 11-inch by 17-inch sheet of paper or onto two sheets of standard-size 8 1/2-inch by 11-inch paper, which could be taped together to form one 11 inch by 17 inch poster. Lund said the print is large enough to be read easily.

Lund explained that the poster itself must be posted in the workplace, but an employer who routinely posts notices for employees on a website must use an electronic posting in addition to the physical posting. Lund said the proper location of the poster would vary on a "case-

by-case basis" based on how a particular workplace is set up.

The Office of Federal Contract Compliance Programs will enforce the posting of the poster and the inclusion in federal contracts of language explaining the requirement. If the OFCCP is unable to conciliate a settlement, it would refer the matter to the OLMS for enforcement, Lund said. Lund stressed, however, that the intention is not to impose penalties but to ensure that employees are informed of their rights. "We want the poster posted," he said. Violations could result in a suspension of a federal contract, but "I don't think this is going to get that far," Lund said.

Lund downplayed the controversy that followed OLMS's proposed rule for the poster. "The notion that employees need to know their rights is well-established," he said. There are posters to notify employees of their rights under many statutes, including minimum wage laws, equal employment opportunity laws, job safety and health laws, and the Uniformed Services Employment and Reemployment Rights Act.

In the notice of proposed rulemaking, DOL had proposed that instead of merely listing employee rights based on the statute, the poster should include a more expansive list derived from National Labor Relations Board or court decisions (23 LRW 1241, 8/6/09). Lund told BNA, "There's a balance that has to be struck because the law is evolving." He added, "We've tried to hew as close as possible" to wording on the NLRB web site.

OFCCP estimates that its jurisdiction covers approximately 22 percent of the total civilian workforce.

Text of the final rule may be accessed at <http://op.bna.com/dlrcases.nsf/r?Open=gcii-85lkkb>.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

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