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**** EMPLOYMENT LAW ALERT ****

FINAL REGULATIONS CLARIFY FEDERAL CONTRACTOR NOTICE REQUIREMENTS

By: S. Whitney Rahman

On May 20, 2010, the Department of Labor issued its final regulations implementing Executive Order 13496, signed by President Obama on January 30, 2009. The Executive Order requires all federal contractors and subcontractors to post conspicuous notices of employee rights under the National Labor Relations Act ("NLRA"). The Executive Order had left the specifics regarding notice requirements to the Department of Labor, which has now spoken.

Under the final regulations, nearly all federal contracts and subcontracts must contain specific language as set forth in the regulations. The regulations require contract language to ensure that contractors post notices of employee rights under the NLRA in conspicuous places at the contractor's office and plants, including all places where notices are customarily posted, both physically and electronically. 29 C.F.R. § 471.2 (75 Fed. Reg. at 28398).

Federal contracts not subject to this requirement include: collective bargaining agreements; contracts resulting from solicitations issued before June 21, 2010; contracts and subcontracts for work performed exclusively outside the territorial United States; subcontracts of less than \$10,000.00, as long as not undertaken to avoid the applicability of the regulations. Exempt contracts also include government contracts involving purchases below the simplified acquisition threshold set by Congress under the Office of Federal Procurement Policy Act, as long as not undertaken to avoid applicability of the regulations. Contracts for indefinite quantities must contain the notice language unless the contracting agency or the contractor has reason to believe the total amount ordered under the contract in any year will be less than the simplified acquisition threshold. 29 C.F.R. § 471.3 (75 Fed. Reg. at 28399).

Certain employers also are exempt from the notice requirements. Exempt employers are those excluded from the definition of employer under the NLRA, and include, among others: the United States; any state or political subdivision; and those employers subject to the Railway

Labor Act. Also excluded are employers who only employ or contract with workers who are excluded from the definition of employee under the NLRA. These include: agricultural laborers; those in domestic service of a family or person at his or her home; independent contractors; and supervisors. 29 C.F.R. § 471.4 (75 Fed. Reg. at 28399).

The regulations provide the exact language that must appear in any contracts or subcontracts, as well as the exact language that must appear in the posted notice. The notice language includes general information about employees' rights to organize and bargain collectively, and protection against certain types of employer and union misconduct. It also provides information about contacting the National Labor Relations Board ("NLRB") with any questions or complaints.

A poster with the required notice, translated into languages other than English, will be available through the contracting federal agency or from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitutional Avenue, N.W., Room N-5609, Washington, DC 20210. Alternatively, it will be available for downloading at <http://www.olms.dol.gov>.

The regulations also provide for compliance and enforcement procedures. The Director of the Office of Federal Contract Compliance Programs ("OFCCP") will conduct compliance evaluations to review both contract and notice requirements. 29 C.F.R. § 471.10 (75 Fed. Reg. at 283400). In addition, employees may initiate a review process by filing a complaint with the OFCCP or the Office of Labor-Management Standards ("OLMS"). 29 C.F.R. § 471.11 (75 Fed. Reg. at 28400).

If a contractor violates the regulations, the OFCCP first will try to conciliate the matter. Failing that, an administrative enforcement action may be undertaken. A final administrative order will order compliance, provide remedies, and may impose sanctions and penalties. 29 C.F.R. § 471.13 (75 Fed. Reg. at 28401). Possible sanctions and penalties include contract suspension or termination, or debarment. 29 C.F.R. § 471.14 (75 Fed. Reg. at 28401).

These regulations go into effect June 21, 2010.

If you have any questions about this or any other labor or employment matter, please call S. Whitney Rahman or John W. Roland at 610-372-5588.