



LABOR & EMPLOYMENT UPDATE

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Two Employment Regulations Affecting Federal Contractors Take Effect

Two federal regulations have taken effect in the past month that expand the rights and protections of employees of federal contractors. The first regulation applies only to federal defense contractors and bars certain pre-dispute arbitration agreements. The second regulation applies to federal contractors generally and requires employers to post a notice of employee rights under the National Labor Relations Act.

The Franken Amendment

On May 19, 2010, the Department of Defense issued an interim rule implementing Section 8116(a) of the 2010 Department of Defense Appropriations Act, the so-called "Franken Amendment," which prohibits defense contractors from requiring arbitration of certain claims as a condition of employment. Section 8116(a) applies to federal defense contracts and subcontracts using more than \$1 million in funds appropriated or made available by the Fiscal Year 2010 Defense Appropriations Act. The statute provides that covered contractors may not enter into new agreements or enforce existing agreements that require employees or independent contractors to arbitrate any claims arising under Title VII or any tort claims arising from sexual assault or sexual harassment. The interim rule makes clear that the mandatory arbitration ban applies to all Title VII claims and covers all employees and independent contractors working for the legal entity holding the prime contract. The rule also offers guidance concerning the \$1 million threshold.

For defense contracts awarded after June 17, 2010, the prime contractor must also certify that its subcontractors agree not to enter into or enforce certain arbitration agreements. The statute and interim rule provide for some exceptions related to certain subcontracts and matters of national security. Because the Act and interim rule relate to appropriations for the fiscal year ending September 30, 2010, defense contractors will need to monitor whether the Amendment is renewed in future fiscal years. Regardless of future legislation, the mandatory arbitration ban will likely continue to apply to employers with federal contracts receiving more than \$1 million in funds appropriated in fiscal year 2010 even if such contract extends beyond that year. The Department of Defense accepted public comment on the interim rule through July 19, 2010 and will likely issue a final rule in the near future.

Notification of Employee Rights Under Federal Labor Laws

On May 20, 2010, the Department of Labor issued a final rule implementing President Obama's Executive Order titled "Notification of Employee Rights Under Federal Labor Laws." The Order provided that federal government contracts must require contractors and subcontractors to post notices informing employees of their rights under federal labor laws. Under the final rule, which took effect June 21, 2010, covered employers must post notices informing employees of their rights under the National Labor Relations Act, which protects "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 of protection." The rule does not require contractors to post the notice in all places of employment, but only "where employees engage in activity relating to the performance of the covered contract." The posting requirement does not apply to prime contracts under the Simplified Acquisition Threshold, currently set at \$100,000, or to subcontracts below \$10,000.

If you have any questions regarding the Franken Amendment or the posting requirement, please contact your regular Sidley Austin contact or any member of the Employment & Labor Group or the Government Contracts Counseling and Litigation Group.

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