

# PUBLICATION

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## Federal Contractors: The one, two, three punch!

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President Barack Obama signed a series of three executive orders on January 30, 2009 that he said should "level the playing field" for labor unions in struggles with management. President Obama stated, "I do not view the labor movement as part of the problem. To me, it's part of the solution." He then added, "You cannot have a strong middle class without a strong labor movement." Below is a summary of these pro-labor executive orders that apply to federal contractors.

### The Right Job: Notification of Employee Rights under Federal Labor Laws

The first order reverses Executive Order 13201, issued by President George W. Bush, which required federal contractors to post a Beck notice informing unionized workers that they could substantially limit their financial support to unions serving as their exclusive bargaining representatives. By contrast, this new executive order will require all federal contractors to post "workers' rights under the National Labor Relations Act" (NLRA) where notices to employees are customarily posted. The content of this notice is to be developed by the Secretary of Labor and regulations regarding its posting will be forthcoming. Nevertheless, the posting is widely expected to inform workers of their right to form, join, or assist a labor union.

### The Left Hook: Economy in Government Contracting

The second executive order requires that a government contracting department or agency exclude any billing, claim, proposal, or disbursement under any Federal Government contract for the costs of activities undertaken to persuade employees to exercise or not exercise the right to organize and to bargain collectively. Unallowable costs include: (1) preparing and distributing materials; (2) hiring or consulting legal counsel or consultants; (3) holding captive, paid employee meetings; and (4) planning or conducting activities by managers, supervisors, or union representatives during work hours.

Thus, these two orders will effectively require federal contractors to notify individuals of their rights to form, join, or assist a labor union, but they will not be reimbursed for any expenses incurred in the contractor's efforts to provide an alternative voice.

### The Knockout: Non-displacement of Qualified Workers under Service Contracts

The President's final order mandates that when a government contract is terminated and awarded to a successor company for the same services to be performed at the same location, all non-supervisory and non-management service employees will receive a right of first refusal of employment when their jobs would otherwise be terminated. Under this order, the successor contractor must make an express offer of employment to the predecessor's non-supervisory employees and allow them at least 10 days to consider and accept the offer. The executive order applies to any contract for services entered into by the Federal Government that is covered by the Service Contract Act of 1965, 41 U.S.C. §§ 351, *et seq.* The order excludes five narrow categories of contracts from its requirements.

The Secretary of Labor has 120 days from January 30, 2009, to initiate rulemaking for the content, form, and size of the poster to notify workers of their rights under the NLRA. Upon issuing a final rule, federal contractors

must then comply with the posting requirements. Contractors should note that the *Beck* notice order is revoked effective immediately. This does not mean that contractors have to remove their current postings, only that the *Beck* order will no longer be enforced. The Federal Acquisition Regulatory Council (the FAR Council) has 150 days from January 30, 2009 to adopt rules and regulations regarding the Economy in Government Contracting Order, after which the Order will apply to contracts resulting from solicitations issued on or after such action by the FAR Council. The FAR Council and the Secretary of Labor have 180 days from January 30, 2009 to promulgate rules and regulations implementing the Non-Displacement Order. It will then apply to solicitations for government contracts issued on or after such date.

Finally, although contractors do not really need to take any immediate action because of these orders, contractors should familiarize themselves with the content of the orders and undertake a review of their current labor policies with an understanding that the Obama Administration is going to be more labor friendly than the Bush Administration.