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Government to Monitor Federal Contractors' and Subcontractors' Labor Relations Activities

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Last week, the Office of Labor-Management Standards (OLMS) – a division within the Department of Labor – issued a new rule that will make it easier for the federal government to track whether its contractors and subcontractors have engaged in certain efforts to potentially dissuade their workers from unionization. The rule is slated to go into effect on Aug. 28, 2023.

According to the OLMS announcement, "Pursuant to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), employers must file a Form LM-10 with OLMS to disclose certain payments, expenditures, agreements, and arrangements. Employers must file reports covering, among other activities, agreements with consultants (and other payments and expenditures) made with an object to persuade employees concerning their organizing and collective bargaining rights or to surveil the activities of employees and unions involved in a labor dispute with such employer. This revision implements OLMS' September 13, 2022, proposal to add to the Form LM-10 report a checkbox requiring employer filers to indicate whether they were federal contractors or subcontractors, and two lines for entry of filers' Unique Entity Identifier and federal contracting agency or agencies."

The fact sheet issued for the new rule further explains, "OLMS seeks to enhance transparency and promote harmonious labor relations. Workers will now have access to information concerning the indirect source of the funding used to persuade or surveil them in connection with organizing, collective bargaining, and other concerted activities at the workplace. In addition, the public and policymakers will now know whether public funds indirectly lead to disruptions to harmonious labor relations and workers' rights, even if the underlying activities were not unlawful."

That fact sheet also notes there currently is an executive order in effect that prohibits the government from reimbursing contractors for any costs associated with "persuader" activity.

Persuader activity is direct action or communication that seeks to persuade employees to either support or not support a union. The most common example of this would be an outside labor consultant talking directly with employees about whether or not to support a union, or consultants giving speeches to employees about the same. Some labor consultants are former union organizers or officials who now work for agencies that provider persuader services. The consultants come in during a union campaign and discuss their experiences and opinions as to why unionization may not

be in the best interest of the workforce or company.

Depending on the campaign, some companies routinely use these types of services. There are legal limits on what persuaders can say under the National Labor Relations Act. For example, persuaders cannot make threats or promises to a workforce, nor can they interrogate workers about their union views or engage in surveillance of employee union activity. The same applies to employers.

When a company uses “persuaders,” these arrangements and the money spent typically are required to be reported on the Form LM-10. The new rule does not alter that obligation; rather, it now makes it easier for the federal government to track if its contractors or subcontractors are using or have paid for these services. Accordingly, all entities holding or servicing federal contracts should take note of this new development and take steps to ensure compliance.

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