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## US Labor Department Publishes Rule Requiring Posting of Employee Rights

The U.S. Department of Labor published a final rule in the May 20 edition of the *Federal Register* requiring federal contractors and subcontractors to provide notice to their employees of their rights under the National Labor Relations Act.

"This regulation, by requiring all covered federal contractors and subcontractors to post a notice in their workplaces, ensures their employees are aware of their rights under the National Labor Relations Act," said John Lund, director of the department's Office of Labor-Management Standards. "Knowing their labor law rights leads to more stable labor-management relations and a more engaged workforce, which in turn facilitates greater efficiency and timely completion of federal contracts."

Federal contractors and subcontractors will be required to post the prescribed employee rights notice at their workplaces. The notice lists employees' rights under the NLRA to form, join and assist a union and to bargain collectively with their employer; provides examples of unlawful employer and union conduct that interferes with those rights; and indicates how employees can contact the National Labor Relations Board, the federal agency that enforces those rights, with questions or complaints. The rule implements provisions of Executive Order 13496, which was signed by President Barack Obama on Jan. 30, 2009. The requirement for posting this employee notice must be included in every covered federal contract and subcontract.

Under the rule, employees will have the right to file complaints with the Department of Labor about contractors that do not comply with the prescribed requirements. Contractors that violate the requirements of the regulations may be subject to sanctions, including suspension or cancellation of the contract. Two Labor Department agencies, OLMS and the Office of Federal Contract Compliance Programs, are responsible for administering and enforcing the rule's requirements. For more information, visit the OLMS website at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>

## Revised Child Labor Regulations Go Into Effect in July

The Department of Labor's (DOL) Wage and Hour Division has finalized regulations that, effective July 19, 2010, revise the child labor rules for non-agricultural work.

**14 and 15 year-olds.** 29 CFR 570.34 has been amended to allow 14- and 15-year-olds to perform work of an intellectual or artistic nature (e.g., advertising, banking, computer programming, drawing, and teaching). 29 CFR 570.37 has been amended to create a new work-study program for 14- and 15-year-old students who wish to use their school-supervised work experience as a means to realize their

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academic potential and obtain a college education. 29 CFR 570.33 has been amended to prohibit 14- and 15-year-olds from engaging in “youth peddling” activities or non-charitable door-to-door sales. “Youth peddling” includes the selling of goods or services to customers at locations other than the youth-employer's establishment, such as the customers' residences or places of business, or public places such as street corners and public transportation stations.

**Workers under age 18.** The final regulations prohibit workers under the age of 18 from working in certain industries such as construction, poultry slaughtering, and forest fire fighting.

## **Paying Summer Interns**

The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the “for-profit” private sector will most often be viewed as employment, unless the test described below relating to trainees is met. Interns in the “for-profit” private sector who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.\*

### **The Test for Unpaid Interns**

There are some circumstances under which individuals who participate in “for-profit” private sector internships or training programs may do so without compensation. The Supreme Court has held that the term “suffer or permit to work” cannot be interpreted so as to make a person whose work serves only his or her own interest an employee of another who provides aid or instruction. This may apply to interns who receive training for their own educational benefit if the training meets certain criteria. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

The following six criteria must be applied when making this determination:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act's minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of “employ” is very broad.