



Electronic Dispatch

# Labor and Employment Law Information Memo

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## U.S. DEPARTMENT OF LABOR STEPS UP ENFORCEMENT OF BECK NOTICE REQUIREMENTS

The U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") recently announced that it intends to step up enforcement of the requirement that federal contractors and subcontractors post a "Notice of Employee Rights Concerning Payment of Union Dues or Fees" under Executive Order 13201. Executive Order 13201 not only requires posting of the notice, but also provides that all contracts and purchase orders for purchases of \$100,000 or more, entered into on or after April 28, 2004, must include a provision notifying subcontractors of the obligation to post the notice.

The notice, which is referred to as a "Beck notice," informs employees that they cannot be forced to join a union or maintain membership in a union to retain their jobs. In addition, the Beck notice informs employees who are subject to a union security clause, but choose not to be a union member, of their right to limit the use of union dues deducted from their paychecks to representational rather than political activities. Employees who do not want to pay for activities unrelated to collective bargaining, contract administration, or grievance adjustment may be entitled to a refund and a reduction in their future payments. The notice must be posted in conspicuous places throughout the contractor's facilities, and must even be posted in facilities where no work is performed under the government contract, unless a waiver has been obtained from the Office of Labor-Management Standards ("OLMS") with respect to those facilities.

The Beck notice can be obtained from the OLMS website at <http://www.dol.gov/esa/regs/compliance/olms/eo13201posterpg.htm>.

Federal contractors with less than 15 employees, businesses with federal contracts amounting to less than \$100,000, businesses without a formally recognized union, businesses located in "right to work" states, and facilities outside the United States that are staffed with non-U.S. workers, are exempt from the posting requirements.

The OFCCP is empowered to investigate any federal contractor, subcontractor, or vendor to determine whether it is in compliance with Executive Order 13201. The OFCCP has announced that it will review contractors' compliance with the posting requirements during its regularly scheduled compliance evaluations. The OFCCP intends to have a Compliance Officer conduct site visits to review contractors' compliance with these obligations. If a site visit is not feasible, the Compliance Officer will conduct a telephone check. Although the OFCCP has suggested that, as part of its enforcement initiative, it will provide assistance to non-complying contractors to ensure that they meet their obligations under Executive Order 13201, contractors who are subject to the Beck notice requirements are well-advised to ensure their compliance in advance to avoid facing penalties or sanctions. A non-complying contractor could face termination or suspension of its federal contracts, and even be declared ineligible to bid on future federal contracts.

If you need advice regarding any posting obligations you may have under Executive Order 13201, please contact:

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# BS&K HR Training Services

More and more often, courts are finding that employers who have sexual, and other, harassment policies, but who have not provided actual supervisory and management training in those areas as a supplement to those policies, simply have not done enough to avoid costly liability. Here are some of the things courts have been saying about the need for formal training:

- The failure of an employer to provide manager and supervisory training regarding the requirements of discrimination laws is an "*extraordinary mistake*." (United States Court of Appeals for the Seventh Circuit)
- Only those employers which adopt anti-discrimination policies *and* take affirmative steps to educate their employees (especially their supervisory and management employees) about workplace anti-discrimination laws fall within the protection from punitive damages offered by Supreme Court decisions. (United States Court of Appeals for the Tenth Circuit)
- Employers must not only provide anti-discrimination training for supervisors and managers, but that training must be *mandatory*. (New Jersey Supreme Court)
- Even the EEOC's published Guidelines provide that "reasonable care" to prevent harassment *must* include training, and that the promulgation of workplace policies standing alone are not enough.

BS&K can help you avoid these same mistakes. With almost 70 years in the Labor and Employment Law field, we have the knowledge and experience to provide cost-effective EEO training for your supervisors and managers. You can choose from one of our existing programs or we can design one specifically with you in mind. Either way you will find this to be a prudent approach to risk management.

Call us for details concerning any of our Supervisory and Management Training Programs:

- ADA and FMLA
- Avoiding Discrimination
- Conducting Workplace Investigations
- Discipline and Discharge
- Diversity
- Documentation and Recordkeeping
- Employee Evaluations and Appraisals
- Fostering Positive Employee Relations
- Interviewing and Hiring
- Layoffs Without Lawsuits
- Problem Resolution (Procedures)
- Sexual and Other Harassment
- Supervising Sick, Injured or Disabled Employees
- Working With and Without Unions

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