



If you've got it, a truck brought it!

American Trucking Associations

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September 2, 2009

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Submitted via Federal Rulemaking Portal at:

www.regulations.gov

Re: Department of Labor – RIN 1215-AB70
Implementing Executive Order 13496 regarding
Notification of Employee Rights Under Federal Labor Laws
74 Federal Register at page 38488 on August 3, 2009

The American Trucking Associations, Inc.¹ (“ATA”) is writing to comment on the Department of Labor’s (“DoL”) *Notice of Proposed Rulemaking* (NPRM) to implement Executive Order 13496² (hereinafter the “Order”) which requires contractors serving nonexempt federal agencies to “...post notices informing their employees of their rights as employees under Federal labor laws.”³ The commercial trucking industry is a mission critical component of the United States’ ability to protect itself domestically and globally, and to provide lifesaving, humanitarian relief and support in times of national emergency. The harmonious functioning of the United States supply chain system and the ability of America’s federal agencies to perform their missions is inextricably linked. Thus the productive and balanced relationship between motor carriers and their employees is critical to all federal agencies’ ability to function.

¹ The **American Trucking Associations** is a federation of trade associations representing the full scope of America’s trucking industry, including those companies supporting federal freight logistics. ATA is a united federation of motor carriers, freight brokers, state trucking associations from all 50 states, and national trucking conferences and councils created to promote and advance the safety, productivity, security and related interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses more than 37,000 companies including every type and class of motor carrier operation.

² See 73 *Federal Register* 38488 (August 3, 2009).

³ Ibidem, page 38488

A. Parties' Rights Need to be Balanced

As drafted, the proposed Notice contradicts case law under the Supreme Court precedent established in Communications Workers v. Beck, 487 U.S. 735 (1988). The only way to assure the proposed language does not run afoul of established law is to produce a document that clearly results in a balanced presentation of employee and employer rights. Currently, the Notice falls far short of the *Beck* standard and instead presents such a slanted version of the law that it becomes fundamentally inaccurate. Indeed, such a distorted perspective would imply to employees a set of conditions that in reality do not exist under the law, and foster unprotected actions that jeopardize their employment. ATA cannot see how such misleading messages serve the best interest of any party, but in particular, the well-being of employees whom the Notice is purportedly intended to benefit.

A collective gross imbalance is established in the draft Notice by great elaboration of NLRA Section 7 rights of employees to organize and engage in concerted activity. By contrast, there is a glaring omission regarding the companion rights for employees when they chose to refrain from all such activity, and with the assurance that they will be free from harassing conduct designed to intimidate them into capitulation. Finally, the Rule fails to inform employees of an employer's right to free speech, private property, and employer rights found in Section 8 of the NLRA. NLRB and DoL should be neutral as to whether an employer and their employees agree to organize a union, and focus on positive and collaborative relationships. Instead, the Notice becomes radically tendentious by the relative weight of employee rights vs. employer rights. It gives the impression that the DoL Notice favors union organization, and that employers may in fact deserve punitive measures if they chose not support a labor movement.

B. Adopting Comments by Reference

ATA has reviewed the comments of both the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce (USCOC). After careful examination, and for the efficiency of the docketing process, we adopt and support the entirety of those submitted comments, and ask DoL to consider those points also as the comments of the trucking industry. In addition thereto, we add the following comments that are unique to the trucking industry:

C. Federal Agency Reliance on Motor Carrier Industry

Government has a vital interest in the uninterrupted support of the commercial supply chain, but as drafted, the Notice seems to invite more conflict than it does to engender a positive and collaborative work environment. ATA's members haul the vast majority of every conceivable commodity and equipment supplied to each of the 140 federal departments and agencies. Whether for the Federal Emergency Management Agency (FEMA), the General Services Administration (GSA), or the Department of Defense (DoD), ATA's members provide every type of freight service in existence to

federal agencies, ranging from the routine to the highest magnitude of secure commodities transportation. While shipments may be multimodal (i.e. by water, air or land), virtually all supplies arriving at federal agencies (or commercial freight docks) rely on a minimum of one link provided by a commercial truck. Several ATA members own and operate freight aircraft and water vessels, and supply multimodal freight service under one corporate umbrella. The dominance of the trucking industry in both commerce and federal operations is further articulated in that 69% of all tonnage travels by truck, and 84 cents of every shipper dollar is spent on truck service.⁴

Among the lessons of Hurricane Katrina are the importance of timely and effective relief to citizens in need. In such conditions, trucking operations are critically necessary because they are uniquely nimble, responsive and able to reroute in transit to destination when a segment of highway, bridge or railroad tracks are destroyed. Any interruption in the supply chain, whether by nature or by regulatory caveat, can have economic, humanitarian or political consequences. As drafted, the Notice would induce conflict rather than mutually productive relationships in the workplace, which depending on the timing of unintended consequences could interrupt vital federal mission support.

D. Alternative Means of Compliance Should be Provided

DoL should provide an alternative means of compliance in lieu of placing the subject posters on the walls of employers facilities. There are situations in our industry when doing so is either impractical or would reduce the limited space that is currently used for workplace safety posters. The trucking industry employs, directly and indirectly, nearly nine million people, or one in 15 civilian workers.⁵ Our members' business models are extremely diverse. Some own several thousand tractors and trailers. Other large motor carrier companies may own none, but contract with independent owner operators who, as smaller scale entrepreneurs, proudly operate their own independent businesses. The fact that 95.9% of all motor carriers have 20 or fewer trucks⁶ demonstrates the prevalence of small businesses in our industry.

Regardless of the size, it is common for a motor carrier or freight broker to have a relatively high percentage of employees who work from home, or at remote terminals. Drivers and the sales force are on the road and may make very infrequent stops into the company office. These highly nuanced business configurations and interrelationships not only produce great efficiencies, but also result in circumstances where it may be impractical to hang posters and achieve the intended communication that is subject of the Order. Examples of little-to-no space for subject posters may include a situation where an employee or subcontractor's workplace is a mobile office in the form of a class 8 truck

⁴ ATA, Global Insight, Martin Labbe Associates, U.S. DoL

⁵ Ibid

⁶ Ibid

tractor, where an employee's personal or company vehicle is used to commute from one shipper customer to another, or where their home and office are one in the same. Accordingly, ATA requests that an alternative means of compliance, as noted below, be provided.

It is important to note that the trucking industry is an intensely safety-oriented culture. ATA's members utilize available space in the common areas of the workplace to display safety posters that draw attention not only to safe practices in terminals, yards and docking areas, but when operating a class 8 commercial truck, weighing up to 80,000 pounds (or more with special permits), and traversing along public thoroughfares. As the highway is our primary workplace, many carrier facilities are very small because they seek to reduce their fixed operating costs with minimal office and public space. While our industry is committed to complying with all applicable laws and regulations, we are concerned that to comply with the Order as drafted would compete for limited available display space currently used to promote safety education and awareness. The effect of the Order then would be to crowd out safe working and driving policies adopted by the motor carrier. This should not happen.

For the reasons stated above, ATA believes that greater exposure to the message intended by the Order could be achieved without reducing safety awareness by alternative means. Accordingly, ATA respectfully requests that DoL adopt:

- a) Posting the Notice on the company web site in the HR space; or**
- b) Adding the Notice to the employee manual, whether it is paper or electronic;**

as full compliance with the Order.

ATA believes this alternative method is superior to placing posters on walls, particularly for the typical workspace in our industry. This is because more room is available in web space and in employee manuals to elaborate on each aspect of employee and employer rights. This educational enhancement is important to assure that employees are not falsely emboldened by observing only the half of the facts that favor unions' objectives regarding employees verses the other half that achieves balance by explaining an employers' lawful prerogatives. If DoL were to let the draft poster stand as currently composed, it will surely lead some, perhaps many, employees to venture dangerously into unprotected actions that undermine their employment tenure.

Our experienced employees are our most valued assets. Without safe and skilled drivers and knowledgeable freight-terminal employees, and all others that support their work, the supply chain would come to a halt, and industries and agencies that rely on the trucking industry for survival would suffer the consequences. To achieve this balance, ATA requests that DoL redraft the proposed required text to fully reflect the employer's roll as outlined in NAM's comments.

E. Uniform Policy, Hats, Buttons, Pins and Employer Branding

ATA specifically references NAM's comments at page 13, Paragraph 6 regarding the Notice's claim that it is unlawful for an employer to prohibit union hats, buttons, t-shirts or other similar paraphernalia. This is simply untrue in several instances. In the trucking industry it is common practice for drivers and other personnel to wear company uniforms that are a strategic part of corporate branding and marketing. Because delivery personnel make daily contact with millions of persons at corporate and homeowner destinations, a consistent and brand-certain appearance is important to the corporate image, as well as the security of persons at the receiving end of the supply chain. Consignees at those destinations rely on the uniform appearance of employees as the first layer of detecting the legitimacy of the person arriving at their doorsteps. Thus for branding, professional image, and for security purposes, motor carrier companies with personnel policies that prohibit non-employer adornments have the right to deny union paraphernalia under established law.

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In Summary

ATA respectfully requests that DoL:

- Adopt the comments of NAM and the US Chamber in the final rule;
- Balance the message to be required for posting;
- Provide that full compliance is met when an employer either:
 - a) Publishes the Notice in the HR portion of the employers' web site; or
 - b) Publishes the Notice in the employer's personnel manual.

ATA asserts that the requested changes noted above are essential to a full understanding between employers and employees, which in turn is essential to uninterrupted supply chain support to companies and agencies' facilities and missions. In particular, ATA respectfully requests that DoL accept the alternate means of compliance articulated in paragraph "D," which in fact we believe would reach more employees than a poster on a wall that is not often seen by many employees in our industry.

If you have any questions concerning these comments, please contact the undersigned at (703) 838-1997.

Respectfully submitted,



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