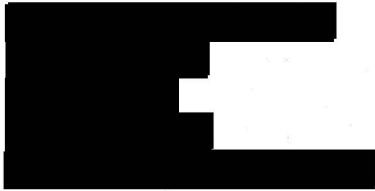




New York State Department of Labor
Eliot Spitzer, Governor
M. Patricia Smith, Commissioner

April 27, 2007



Re: Request for Opinion
Labor Law §661
Minimum Wage Notice Posting Requirements
File No. RO-07-0032

Dear [REDACTED]:

I have been asked to respond to your letter of April 5, 2007 in which you state that your company has received Department of Labor violation notices "for not having: Workers Compensation, Disability Benefits, Unemployment Insurance and associated wage schedule(s) posted on two jobsites." You state that your company is a "mobile workforce" that does not have "central meeting areas, consistent jobsites, 'fixed staffing' or gangboxes on many of (your) work locations." You further state that you have "the required DOL and OSHA posting predominantly displayed at each one of (your) offices (which employees frequent)." You cite Labor Law §661 and ask for the legal basis for the Department's position that you "need to have the associated postings on each public jobsite."

It should first be noted that the two Notice of Labor Law Inspection Findings issued to your company, copies of which are enclosed, make no mention of Labor Law §661, which requires posting of the Minimum Wage Law. Therefore, your company has not been charged with any violation of that section of law. Instead, your company has been provided with notice that it failed to make postings required by Labor Law §220(3-a)(a) (prevailing wage schedules), Workers' Compensation Law §51(workers' compensation), Workers' Compensation Law §229 (disability benefits) and Labor Regulation 12 NYCRR §472.7(b) (unemployment insurance).

Your question, therefore, may be stated as follows: must the required postings be made at each jobsite at which employees are working, or are postings at offices frequented by the employees sufficient for such purpose. It is the opinion of the Commissioner of Labor that postings must be made at jobsites.

Labor Law §220(3-a)(a) requires that prevailing wage schedules be posted "in a prominent and accessible place *on the site where the work is performed.*" (Emphasis added). 12 NYCRR §472.7(b) states that unemployment insurance notices "must be posted

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conspicuously in easily accessible places customarily frequented by the employees *and at or near each location where the employees' services are performed.*" (Emphasis added). Workers Compensation Law §§51 and 229 both say that the required postings must be made "in a conspicuous place or places in and about his (the employer's) place or places of business."

As the relevant laws clearly state that prevailing wage schedules and unemployment insurance notices must be posted where the work is performed, there can be no doubt that these postings must be made on each jobsite. Even though there is no definition in law of the phrase "in and about his place or places of business," used in the Workers' Compensation Law, it is the Commissioner's opinion that such places include jobsites. Since there is no definition of the phrase "in and about his place or places of business" in the Workers' Compensation Law, regulation or case law, the Department is obligated to look to other, similar requirements and to interpret this statute in harmony with those similar requirements. In *Harnett v. Village of Ballston Spa*, 152 A.D.2d 83 (3rd Dept. 1989), *app. dism.* 75 N.Y.2d 863 (1990), *motion for lv. to app. den.* 75 N.Y.2d 711 (1990), the Court relied heavily on the rule of statutory construction that statutes that concern the same subject matter must be construed in harmony with one another (152 A.D.2d at 85-86) (citations omitted). Therefore, as these statutes and regulation all concern the same subject matter, to wit: the manner in which notices to employees must be posted, and given the rule of statutory construction that statutes concerning the same subject matter must be construed in harmony with one another, it is the Department's opinion that these statutes and regulation must be interpreted in harmony with one another. For these reasons, it is the Department of Labor's interpretation of law that as Labor Law §220(3-a)(a) and 12 NYCRR §472.7 clearly require notices to be posted at jobsites, the postings required by the Workers' Compensation Law must also be posted at jobsites.

Please be advised that the meaning of your statement "(t)his policy would require us to be providing, and upkeeping, these postings to each one of our employees who may be onsite at any given time due to staffing changes," is not clear. None of these statutes or regulation requires that notices be provided to each individual employee. Posting one copy of each of the required notices at each of the required locations is sufficient compliance. In short, one of each of the required notices must be posted at each jobsite. There is no need to provide each employee at each jobsite with each notice.

This opinion is based upon the information provided in your letter of April 5, 2007. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts which have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito
Counsel


by: Jeffrey G. Shapiro
Senior Attorney

JGS:
enc.

bcc: Opinion File
Jeffrey G. Shapiro, Counsel
CO Dayfile (RO-07-0032)