

# Department of Labor (DOL) Defends Posting Requirements Against Challenge From Contractors

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This week the **Department of Labor** (DOL) defended its rule requiring **federal contractors** to post notices informing employees of their **right to unionize**. The **National Association of Manufacturers** (NAM) and the Virginia Manufacturers Association have brought a challenge to the rule in federal court based upon statutory and First Amendment grounds.

In its opposition to NAM's motion for summary judgment, the DOL rejected NAM's contention that the notices constitute "compelled speech" interfering with federal contractors' First Amendment Rights. Instead, DOL argued, "[i]f plaintiffs do not like the terms of doing business with the federal government, their recourse is to decline the government's money." In addition, DOL argued that the notices promote a more efficient employment environment by preventing labor unrest.

Each side relied on competing D.C. Circuit authority to support their respective positions. In its motion for summary judgment, NAM cited the D.C. Circuit's 2013 decision in *NAM v. National Labor Relations Board*, in which NAM successfully struck down the National Labor Relations Board's requirement that employers post notices identical to those required by DOL on the grounds that it was compelled speech that violated Section 8(c) of the National Labor Rights Act (NLRA). DOL countered by pointing to the D.C. Circuit's 2003 decision in *United Auto Workers-Labor Employment Training Corp. v. Chao*, which rejected the United Auto Workers' challenge to required notices informing employees of their right not to join a union.

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National Law Review, Volume IV, Number 156

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