

MEMORANDUM OF LAW

DATE: August 15, 1991

TO: Kent Lewis, Assistant Personnel Director

FROM: City Attorney

SUBJECT: Statutory Posting of Employment Laws

You have asked if the City is legally required to post the notices depicted in the advertisement attached to this memorandum as Enclosure (1). Additionally, you have asked what, if any, penalties will accrue to the City for failure to comply with any applicable posting laws.

Certain federal labor laws are considered so important by the legislature that the laws are required to be clearly posted so that employees can be apprised of their rights at all times.

These topics are the Minimum Wage laws, Occupation Health and Safety requirements, Employee Polygraph Protection laws and Civil Rights laws. Unfortunately, there is little guidance in the statutes themselves to tell us exactly how much of the law must be presented to the employees. However, the federal government does publish and issue, free of cost, posters that meet its guidelines. We recommend these posters be used by the City.

The Fair Labor Standards Act (FLSA) requires that employees be kept informed of their rights with regard to polygraph testing. Pursuant to this, 29 U.S.C. section 2003 requires that every employer shall post, and keep posted, notices of these laws in conspicuous places. However, no portion of this section applies to any governmental employer. 29 U.S.C. section 2006(a).

26 U.S.C. section 206 of the FLSA implements the policy of set minimum wages in virtually all workplaces. 29 C.F.R. section 516.4 requires that every employer subject to the Act shall post, and keep posted, in conspicuous places notices explaining the Act. The City has been subject to the FLSA since 1985, thus the City is obligated to post notices of the minimum wage laws.

Similarly, there are several provisions of the 1964 Civil Rights Act that are required to be posted in conspicuous places at employee worksites. Additionally, notices regarding the prohibition against age discrimination are also required to be posted pursuant to 29 U.S.C. section 627. This section also states that the content of the poster should be sufficient to carry out the purpose of informing the employees. Under 29 C.F.R. section 1601.30, employers must maintain posters informing employees of their rights under the Civil Rights Act. The

specific provisions that are to be used are prescribed by the Equal Employment Opportunity Commission and are found at 42 U.S.C. section 2000(e)(10)(b). Failure to post notices of these provisions results in a penalty of \$100 for each separate offense.

CONCLUSION

The above mentioned laws are required to be posted in conspicuous places where employees can easily see them. The most useful interpretation of what the notices should say comes from the government itself. Copies of the government published notices for each of these laws have been attached here as Enclosures (2) through (5).

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:310(x043.2)

Enclosures 1-5

ML-91-61