

E-GUIDE

Labor Law Poster Compliance Audit: Are You Up to Date with the Latest Requirements?



POSTER  GUARD[®]
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About This Guide

This guide covers important information about labor law posting compliance – starting with why it matters, the risks of non-compliance and the specifics of what it takes to get it right. It will take you through a 10-step process that serves as a complete labor law posting audit for your business.

Beyond federal, state, county and city poster requirements, there are countless other posting regulations that can land a business in trouble if overlooked. Foreign-language requirements, federal contractor requirements and remote worker postings are just some of the ever-changing challenges employers face.

After reading this guide, you'll have clear direction on the best strategies – and best practices – for maintaining compliance and shielding your business from a lawsuit.

Note: While we make every effort to provide the most accurate, up-to-date information at the time of publication, employment laws are constantly evolving, and this material is subject to change.

Why Labor Law Postings Are Critical

Before we get into the audit, let's examine some legal fundamentals. Labor law posting compliance is not a choice. Both federal and state posters are mandatory for every U.S. employer. These notices inform employees of their rights under certain laws. And there can be serious consequences for failing to comply.

In the statutes for the general federal postings, the government is authorized to fine more than \$41,000 per location for posting violations. And government fines can be imposed for missing posters or outdated posters. On a state and local level, the government posting fines are typically between \$100 and \$1000 per violation. Each posting has its own fines attached to it.

But the real danger with posting violations is related to employee lawsuits and employee disputes. There are a few different ways that posting compliance comes into play with employee lawsuits.

The first involves the statute of limitations. This is the defense that allows you to have a claim stricken or dismissed because it was filed too late. However, if you have a posting violation – either you didn't display the current poster or you're missing a poster – the courts can say that you cannot rely on the statute of limitations as a defense because you didn't inform employees of their rights. Consequently, you lose a very important legal defense.

Another way that posting compliance comes into play is as evidence of bad faith in an employment lawsuit. This can affect your damages either by inflating a damage award against you or standing in the way of a good faith defense that would otherwise reduce or eliminate your damages. And finally, under the FMLA you can face a civil lawsuit if the failure to post ended up interfering with someone's FMLA rights.

Bottom line: It's important to make sure you are on the right side of the law when it comes to posting compliance. Posting compliance is your first line of defense whether it's a government audit or a private lawsuit. It's simply not worth the risk to cut corners knowing the risks and potential liability involved.

Labor Law Posting Audit Step 1: Make Sure You Have All Required Postings

The first step in auditing your posting compliance is making sure you have all the required postings. Currently, there are six mandatory federal posters:

1. Equal Employment Opportunity

Commission (EEOC): This poster covers anti-discrimination provisions and protected characteristics under federal law. (This posting was revised in June 2023, requiring covered employers to update.)

2. Occupational Safety and Health Act

(OSHA): This notice highlights key provisions regarding workplace safety.

3. Uniformed Services Employment and Reemployment Rights Act (USERRA):

This poster covers re-employment after military leave, anti-discrimination provisions and issues surrounding health insurance.

4. Fair Labor Standards Act (FLSA): One of the most recognized postings, this notifies employees about the federal minimum wage rate, overtime rules and child labor laws. (This posting was revised in May 2023, requiring covered employers to update.)

5. Employee Polygraph Protection Act (EPPA): This informs employees about the rules with lie detector tests in employment. It's mandatory whether or not you use lie detector tests.

There Is No "One-Stop Shop" for Free Posters



Something a lot of businesses aren't aware of is that there is not a central place to acquire all government posters. Each poster covers different laws, and they are issued by different agencies. In fact, there can be up to nine different agencies employers would have to contact for all the required posters for federal and state compliance.

- 6. Family and Medical Leave Act (FMLA):** This poster gives employees the basic information about their eligibility for leave, what benefits they can expect, and your responsibilities as the employer regarding FMLA leave procedures. It is generally required for businesses with 50 or more employees. (This posting was last updated in April 2023.)

These are the federal posting requirements. On a state level, there are additional mandatory postings that are required for every business. Depending on the state, this can add up to 19 additional posters – for a total of 25 federal and state postings per location.

Beyond state and federal notices, many cities and counties also have mandatory posters. In fact, approximately 22,000 local jurisdictions have authority to issue their own posting requirements.

Labor Law Posting Audit Step #2: Make Sure Your Postings Are Current

The next step in the audit is making sure you have the correct and latest version of each poster required. This is important because these posting requirements change all the time as new and updated versions are issued by the various government agencies.

Labor law posting requirements change frequently. And keeping up with posting changes is by far the most challenging part of staying in compliance. Prior to 2019, we tracked an average of 75 mandatory poster changes per year (for years). However, in 2019 we saw a spike of over 150 mandatory changes, and this increase continued in 2021 and 2022 having over 200 mandatory changes. So far, in 2023, this record-breaking trend is on pace to continue.

Another problem adding to the complexity of posting compliance is that the government agencies generally don't notify businesses when these posting changes occur. So, it can be difficult because the posting requirements and the notice of changes can be buried on different agency website pages. And many times, it's difficult to track down the current posters and determine what's mandatory to post.

Labor Law Posting Audit Step #3: Make Sure Your Postings Are Compliant

To be in compliance, you need to verify that your posters meet all the requirements for size, font, color and layout. Many posting laws have strict guidelines.

Again, every posting law is different so there's not one uniform standard to follow. For example, some laws specify that the poster must be a minimum of 12-point font while others just say the font size must be easily readable.

And this information can also be difficult to find. It's not always on the agency web page where you find the posters. These requirements can be buried in the underlying statutes or regulations apart from the sample posters on the agency websites.

Labor Law Posting Audit Step #4:

Make Sure You're Posting All Required Languages

Many employers mistakenly believe that they are not required to display foreign labor law postings simply because they have only English-speaking employees on staff. It's a common misconception. But the truth is that nearly half of all states require businesses to display certain labor law postings in both English and Spanish regardless of workforce demographics.

In these 19 states – plus Washington, DC and Puerto Rico – you must display certain (not all) postings in Spanish, even if you have no Spanish-speaking employees:

- Alabama
- Arizona
- California
- Connecticut
- District of Columbia
- Florida
- Georgia
- Kansas
- Louisiana
- Maine
- Maryland
- Mississippi
- New Jersey
- New Mexico
- New York
- North Carolina
- Puerto Rico
- South Carolina
- Tennessee
- Texas
- Utah

A few states go even further and have requirements for other languages, including Russian, Japanese, Arabic, Mandarin and Creole.

Companies with Spanish-speaking workers on staff have additional obligations. If you have locations with a significant number of Spanish-speaking employees who aren't proficient in English, all federal postings must be displayed in both English and Spanish.

What is a "significant number?" The law isn't definitive on this, so most employers display the federal notices in Spanish if it affects 10% or more of their workforce at any given location.

If you have Spanish-speaking employees, your state postings are a consideration, too. For example, in these six states, California, Colorado, Massachusetts, New Jersey, Pennsylvania and Tennessee, you are required to display certain posters in Spanish if you employ a “significant number” of non-English speaking employees. It’s important to note that several cities and counties have foreign language requirements for labor law posters. This is an added complication as employers try to manage federal, state and now local ordinances.

Labor Law Posting Audit Step #5: Make Sure You Consider E-Verify

E-Verify is an internet-based system, and it's operated by the U.S. Department of Homeland Security (DHS). It allows employers to check an employee's eligibility at the time of hire during the I-9 process.

Through its database, it runs a cross-check with the DHS and Social Security Administration's records to determine if an employee is eligible to work in the U.S. Employers who participate in E-Verify have mandatory posting requirements – and this is something employers often overlook.

Who is required to participate in E-Verify?

- Employers who operate in Alabama, Arizona, Georgia, Florida, Louisiana*, Mississippi, North Carolina, South Carolina, Tennessee and Utah*
- Employers with federal government contracts
- All federal agencies
- Public sector (government) employers in Idaho, Indiana, Missouri, Nebraska, Oklahoma, Texas and Virginia

In the states with an asterisk, businesses are allowed to use an alternative to E-Verify. However, the requirements are so similar that most employers choose to use E-Verify.

If you have federal government contracts, you are required to participate in E-Verify regardless of location. Federal agencies must also participate, as well as public sector employers. If you're in any of those categories, you're required to participate, and you also must post the mandatory E-Verify postings. Even if you choose to participate in E-Verify voluntarily, you must comply with the same posting requirement.

So, what are the posting requirements for E-Verify participants? There are two mandatory posters – the E-Verify participation poster and the Right to Work poster, commonly known as the E-Verify Discrimination Poster. Both posters must be posted in English and Spanish even if you have no Spanish-speaking employees. And they must be visible to both applicants and employees.

Labor Law Posting Audit Step #6: Make Sure to Properly Display Individual Postings

Like the E-Verify poster, there are other posters that need to be displayed separately – apart from your general labor law display stations. Typically, these are required to be displayed near the entrance of your facility and not just in employee break rooms.

A good example is the employee no-smoking posters. These are mandatory employee notices that must be posted in over 30 states. And just like the other posters, there are specific posting guidelines to follow, including size, font, color requirements, and posting location.

Some of them have specific statutory language on them and might even cover electronic cigarettes depending on your state or city. Since these must be displayed near an entrance, they ideally should be printed separately from your large format employee posters, so you don't have to post the entire employee posting display at your entrance.

Labor Law Posting Audit Step #7: Make Sure You Include Necessary Industry Postings

Another common mistake is not posting industry-specific labor law notices. Certain industries have additional posting requirements beyond the regular federal, state and local postings that all businesses must display.

To clarify, these are employee-facing notices, not posters for customers, patients or guests. There are several employee-facing posters required for employers in the restaurant industry, in healthcare, and for public sector employers.

These can be additional federal and state postings. But most of the variations for these industries are on a state level. Every state is different, and some states require more than others. In fact, there are up to 17 additional notices for healthcare employers in some states – depending on the type of equipment used and services provided.

Requirements are not limited to these three industries. However, these do have the most obligations.

Labor Law Posting Audit Step #8: Make Sure You Consider Federal Contractor Requirements

The next step in the audit is to make sure you have all the required federal contractor postings if your business has any government contracts or federal funding.

Many different types of businesses today are covered by federal contractor poster requirements – from financial institutions to car dealerships to pharmaceutical companies. When it comes to the postings, the specific posting obligations that you have typically depend on what types of contracts you have and with what government agencies. And sometimes even the amount of the contracts will dictate whether you're required to post.

The most common postings required for federal contractors include:

- Paid Sick Leave
- Minimum Wage (Updated January 2023)
- Pay Transparency Policy Statement
- DOD Hotline
- NLRA
- E-Verify/Right to Work
- Walsh-Healey Public/Service Contracts
- DHS Hotline
- Notice to Workers with Disabilities

These posters change more frequently than the regular federal posters. Also, the penalties for non-compliance can be even more severe. If an employer doesn't comply with their federal contractor posting requirements, there are not only steep fines, but also the risk of losing the government contract or funding. It is typically written into the contracts that they can be suspended or cancelled just because of non-compliance with posting requirements.

Labor Law Posting Audit Step #9: Make Sure You Have Enough Posting Stations

Another common violation is failing to post in proper locations throughout your business. When auditing your posting compliance, you need to make sure you've got the proper number of posting display stations to satisfy the various laws.

All the posting statutes have their own specific language about where to post. But the general rule is that the posters must be displayed in prominent and conspicuous locations throughout your business where they are accessible to all employees.

In a small office, you may be able to satisfy this requirement by posting in one location – like an employee breakroom – if you know that all employees have access to it and use it regularly. In most cases, you're going to need more than one posting display site to make sure all workers have regular access to the posters. The number of display sites you'll have in each facility depends on the logistics and how accessible the posters are to your employees.

To ensure compliance, you should look for highly visible areas accessible to all employees. In a large facility, this could mean posting near each employee entrance, as well the employee breakroom. If you have an HR department, you may also want to post near those offices.

You also need to consider applicant area posting requirements. Out of the seven mandatory federal postings, four of them must be displayed in an area where applicants can view them. These are the **EEOC**, **FMLA**, **USERRA** and **EPPA** postings. And there are others that might apply to your business, like E-Verify or employee no-smoking notices depending on your state. Another important factor to note ... more and more cities and counties have applicant posting requirements.

There are multiple ways to comply with applicant area postings. For example, if you take applications in person, you need to display the posters where they can be seen by job seekers. Or if you have a small area, like a desk or kiosk, where candidates fill out applications, you can provide the postings in a compact format. This is legal providing the font is readable.

Finally, you may be a company that accepts online applications. If so, you need to provide a link to electronic images of the posters so applicants can view them digitally. Depending on your hiring practices, you may need to use more than one posting solution for complete compliance.

Labor Law Posting Audit Step #10: Make Sure You Cover Your Remote Workers

The final step in the compliance audit has to do with your off-site workers – employees who don't regularly report to a physical facility where all your posters are displayed.

More and more people are working remotely, either full- or part-time. This presents employers with a unique challenge when it comes to posting compliance. Unfortunately, many of the government agencies – especially at the state and local level – are slow to adjust posting requirements to keep up with this trend.

By law, employers must provide all employees with the notices that are required to be displayed on workplace walls. However, the law doesn't say it has to be done one certain way when it comes to home-based employees or remote workers. Mailing the posters has been one solution, but now there are guidelines that indicate electronic delivery is a compliant way to provide the postings to off-site workers who log onto computers for work.

To clarify, physical posters must still be displayed for onsite employees. However, for remote workers, electronic postings are acceptable.

In fact, federal agencies have issued guidance on this, indicating that sending the notices electronically is one way to comply with posting requirements for off-site workers. The Department of Labor (DOL) has even clarified that if a worker doesn't come into the office at least 3-4 times a month where physical posters are displayed, posters must be provided in another format such as electronically.

There are a few options for getting the information out to remote workers. However, if your remote employees communicate with the office via email or internet, an online system is a best practice.

DID YOU KNOW?



New York employers are required to provide all employees (remote and onsite) with electronic versions of mandatory postings. More states are expected to follow suit.

Ideally, employers should use a system that sends electronic notifications directly to the remote employee – and one that provides online access to the posting images, sends notices of updates, and tracks employee acknowledgments with the date when they viewed the postings. These acknowledgments are valuable, so you have proof to show that employees received the information.

There are other options like posting a link to the posters on your employee intranet site. In that case, you don't get the acknowledgments and tracking. But for some companies, the intranet link works better logistically.



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