

TIP SHEET

Neglecting Workplace Posting Requirements *Carries Serious (and Costly) Risks*

Most employers know they must display certain labor law postings outlining worker rights. Even still, they may think:

“Government fines are so small, it’s no big deal if we don’t post.”

“There are no poster police out there ... so how would I even get caught?”

Beware! If you’re underestimating the importance of posting compliance — or ignoring the requirements altogether — you could face significant financial and legal complications. It comes down to government penalties and litigation risks, both of which could seriously impact your business. Here are a few key tips for avoiding risks associated with labor law postings.

1 Know Your Obligations

Federal law requires six separate postings for all U.S. businesses (five for businesses with less than 50 employees). State laws add to that number — up to 19 depending where your business operates. Further still, you may have to display as many as 11 additional city/county postings.

Complicating the matter is that postings are issued by multiple agencies. The postings also change frequently, but the government typically does not notify businesses when changes occur.

2 Keep Your Postings Current

Staying current with labor postings is time-consuming ... but it’s a responsibility that must be managed to avoid fines. The amounts are steep — and they can add up quickly if you have violations at multiple locations. On just the federal level, fines can be more than \$38,000 per location for posting violations. On a state and local level, the government posting fines are typically between \$100 and \$1,000 per violation. (Each posting carries its own fines, because every agency and posting law is different.)

3 Reduce Your Exposure in Employment Litigation

Fines are just the beginning. Missing or outdated postings can extend the “statute of limitations” in employment laws. The statute of limitations is a big advantage for employers because it allows you to dismiss a claim that was filed too late. For example, the statute of limitations for a federal discrimination claim is 300 days. For an FLSA overtime case, it’s two years. So, typically, if your business gets a claim from a former or existing employee outside of the established time period, you can move to have it dismissed.

But problems can occur if there’s a posting violation. If you have an outdated poster — or no poster at all — the courts may decide that the statute of limitations doesn’t apply because you didn’t notify employees about their legal rights and responsibilities in the first place. You can’t use it as a defense, and the case may move forward against you.

4 Maintain Your Good Faith Defense

Another way posting compliance comes into play is as evidence of “bad faith.” This term refers to an intentional, dishonest act by not fulfilling legal obligations. A finding of bad faith can directly affect your damages in an employee lawsuit — 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.

In federal discrimination or harassment lawsuits, this may come into play as punitive damages, issued in addition to damages for back and front pay, emotional distress and legal fees. They are typically the largest portion of a plaintiff’s total settlement. Without good faith, employers may also have to pay “liquidated damages” in suits involving laws such as the FLSA and the Equal Pay Act (EPA). This essentially means damages are doubled.

5 Keep Your Postings Current

Clearly, it's more important than ever to meet labor law posting requirements. Given the magnitude of legal exposure and other negative consequences associated with noncompliance, it's not worth the risk to ignore or cut corners with the requirements.

If you don't have the resources to get your business in compliance (and keep it that way), consider using a reputable poster subscription and replacement service. For an annual fee, you can have peace of mind knowing your business is up to date with the latest requirements and fully protected.

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

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