

Best-in-Class Strategies to Comply with Special Posting Laws

(Including New COVID-19 Requirements)



Presented by:

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Posting Compliance Overview

- All employers must post federal, state and local (if applicable) postings
- Mandatory federal posters include:
 - Equal Employment Opportunity Commission (EEOC)
 - Occupational Safety and Health Administration (OSHA)
 - Family and Medical Leave Act (FMLA)
 - Uniformed Services Employment & Reemployment Rights Act (USERRA)
 - Fair Labor Standards Act (FLSA)
 - Employee Polygraph Protection Act (EPPA)
 - Families First Coronavirus Response Act (FFCRA) – New temporary posting for employers with fewer than 500 employees, and certain public sector employers
- Up to 15 additional state-specific posters
- Additional posters required for city/county compliance, government contractors and certain industries



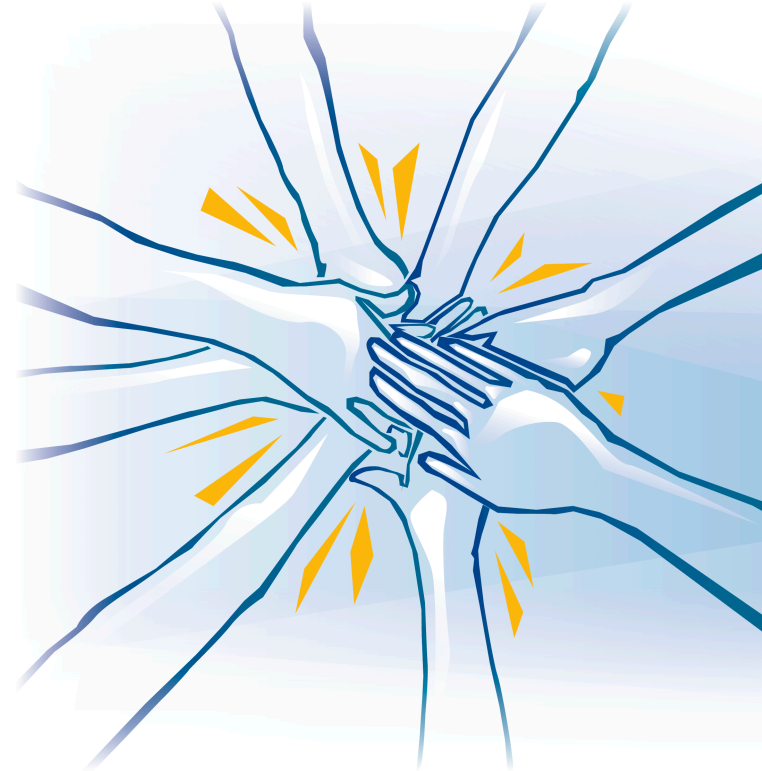
There's no “one-stop shop” for free government posters

- There are 175 different agencies responsible for issuing more than 390 posters (federal and state)
- In a single state, up to 21 postings issued by 9 different agencies for federal/state compliance
- Approximately 22,000 local jurisdictions (city/county) have authority to issue their own posting requirements

And that doesn't include additional postings required if you are in certain industries or have government contracts

Posting changes are on the rise

- There are approximately 150 state-specific poster changes per year (50% require immediate mandatory replacements); this number has increased significantly over the past two years
- Government agencies do not notify you when changes occur
- Posting requirements (including size, font and color mandates, as well as foreign language requirements) and change notifications may be buried in statutes, regulations, case law, and agency website pages



Risks of Non-Compliance

- Government posting fines
 - Federal fines recently increased from \$17,000 to \$35,000+
 - State and local fines typically range from \$100-\$1,000
- Employee lawsuits
 - Failure to post can extend “statute of limitations”
 - Evidence of bad faith
 - FMLA interference of rights
- Posting compliance is your first line of defense in any lawsuit or agency investigation



Additional Requirements & Trends

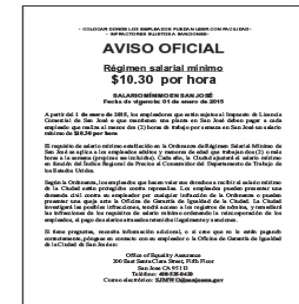
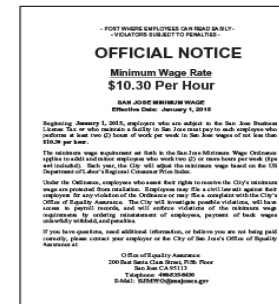
- City/County Postings
- Electronic Postings
- Remote Workers & Telecommuters
- Non-Traditional Worksites (no walls)
- Foreign Language Posting Requirements
- Industry-Specific & Federal Contractor Requirements
- Applicant Area Postings



Local Posting Requirements

Many cities/counties have posting requirements, such as:

- AZ – Flagstaff, Tucson
- CA – Alameda, Belmont, Berkeley, Cupertino, Daly City, El Cerrito, Emeryville, Fremont, Los Altos, Los Angeles, Los Angeles County (Unincorporated Areas), Menlo Park, Milpitas, Mountain View, Novato, Oakland, Palo Alto, Pasadena, Petaluma, Redwood City, Richmond, Sacramento, San Diego, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Cruz, Santa Monica, Sonoma, South San Francisco, Sunnyvale
- CO – Denver
- FL – Broward County, Miami Beach, St. Petersburg
- IL – Chicago, Cook County
- MD – Montgomery County, Prince George's County
- ME – Portland
- MN – Minneapolis, St. Paul
- NE – Fremont, Lincoln
- NM – Albuquerque, Bernalillo County, Las Cruces, Santa Fe
- NY – New York City
- PA – Philadelphia
- TX – Beaumont, Corpus Christi
- WA – Seattle, Tacoma



Electronic Postings

- General Rule: Electronic delivery is not a substitute for full-sized physical posters displayed in conspicuous locations accessible to all employees
- Exceptions: FMLA and USERRA, but only if you communicate other policies electronically and provide all employees with electronic access (also, the new FFCRA posting may be distributed by email or posted on an employee website)
- Special rules also apply for telecommuters and non-traditional worksites without walls

Remote Workers & Telecommuters

- By law, you must provide the mandatory labor law notices to all your employees
- For employees who report to your facility (with physical wall posters) fewer than 3-4 times per month, you must provide the postings in another format
- Electronic solution is ideal for employees who work from home, telecommuters, field salespeople and other remote workers provided with Internet access
- Best practice is to use a solution that pushes out mandatory updates via email alerts and tracks employee acknowledgments



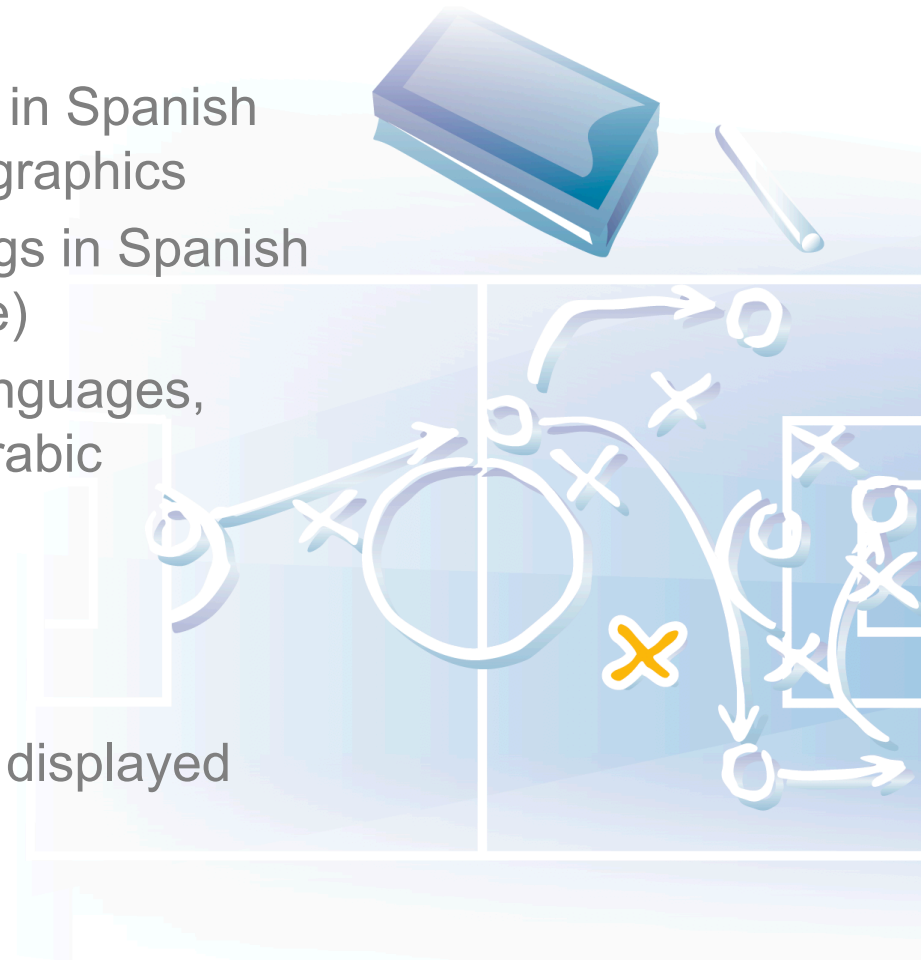
Non-Traditional Worksites (No Walls)

- Many of today's worksites do not have walls to display the required federal, state and local postings
- Examples are mall kiosks, mobile service units, food trucks, valet stations, construction checkpoints, and other facilities without walls
- If electronic access is not provided, consider an alternative format such as a compact binder
- Binders are not a substitute for full-sized posters in traditional workplace facilities with walls



Foreign Language Posting Requirements

- Certain postings must be displayed in Spanish regardless of your workforce demographics
 - 20 states require certain postings in Spanish for all employers (see next slide)
 - A few states include multiple languages, from Russian to Japanese to Arabic
 - City/county postings have similar requirements
- All postings in Puerto Rico must be displayed in Spanish



Foreign Language Posting Requirements (continued)

- Mandatory foreign-language postings are required in:
 - 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

Foreign Language Posting Requirements (continued)

You may have additional obligations if you employ workers who do not speak English:

- Federal: If you have a significant number of Spanish-speaking employees who are not proficient in English, the Federal combination poster must be posted in English and Spanish
- State/Local: Certain state and local posters must be displayed in foreign languages to ensure proper communication in locations with a certain percentage of employees who are not proficient in English

Industry-Specific Posting Obligations

- Certain industries have additional employee-facing posting requirements under federal and state law
- Up to 18 additional postings per state
- Industries with the most requirements include:
 - Public Sector
 - Healthcare
 - Food Establishments



Federal Contractor Posting Requirements

- Regardless of your industry, if your business has federal government contracts you must post additional labor law notices
- In recent years, the number of businesses with government funding/ contracts has grown, especially in industries such as construction, finance/banking, telecommunications, technology, transportation, and non-profit organizations
- Posting obligations depend on types of contracts you have and the value of the contracts

Federal Contractor Posting Requirements (continued)

- The most common postings required for federal contractors are:
 - ✓ Paid Sick Leave
 - ✓ Minimum Wage (Updated Jan. 2020)
 - ✓ “EEO is the Law” Supplement
 - ✓ Pay Transparency Statement
 - ✓ DOD Hotline (Updated Dec. 2019)
 - ✓ DHS Hotline
 - ✓ E-Verify/Right to Work (Updated March 2019)
 - ✓ NLRA (Updated June 2019)
 - ✓ Walsh-Healey Public/Service Contracts
 - ✓ Notice to Workers with Disabilities
 - ✓ Davis-Bacon Act
 - ✓ DOT Federal Highway Construction
- Federal contractor postings change frequently
- Penalties for non-compliance can be severe, including steep fines up to suspension or cancellation of federal contracts

Applicant Area Postings

- Certain federal postings must be displayed to prospective employees during the application process:
 - EEOC
 - FMLA
 - USERRA (best practice to include because the law protects applicants and employees)
 - EPPA
- Certain state and local postings also must be visible to applicants
- Recommended solutions:
 - Compact vinyl adhesive poster for applicant areas
 - Full-size posting display station for dedicated interview/testing rooms
 - Include link to posting images for on-line applicants (not a substitute for wall posters)





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