

Posting Compliance and Lawsuits — Why You Should Care



Webinar Agenda

In addition to a general overview of labor law posting compliance – and the risks of noncompliance – we will cover specific requirements surrounding:

- Foreign language postings
- City and county postings
- Federal contractor postings
- Remote worker postings
- Job applicant postings

POSTING COMPLIANCE OVERVIEW

Employer Posting Requirements

- All employers must display federal, state and local (if applicable) postings
- Mandatory federal posters include:
 - Equal Employment Opportunity Commission (EEOC)
 - Occupational Safety and Health Act (OSHA)
 - Uniformed Services Employment and Reemployment Rights Act (USERRA)
 - Fair Labor Standards Act (FLSA)
 - Employee Polygraph Protection Act (EPPA)
 - Family Medical and Leave Act (FMLA)

Employer Posting Requirements

In addition to federal postings, employers may be required to display:

- Up to 19 additional state-specific posters
- Every state makes its own laws, and no two states have the same posting requirements
- Up to 12 additional posters for city/county compliance
- Additional posters for government contractors and certain industries

There's No “One-Stop Shop” for Postings

- Approximately 175 different federal and state agencies are responsible for issuing more than 400 posters
- In a single state, up to 25 postings issued by up to 9 different agencies may be required for federal/state compliance
- Approximately 22,000 local jurisdictions have authority to issue their own posting requirements
- This doesn't include additional postings required for businesses in certain industries or those with government contracts

Posting Changes Are on the Rise

- Posting changes are on the rise
 - Prior to 2019, we tracked an average of 75 mandatory poster changes per year (for years)
 - In 2019, we saw a spike to 158 changes; 186 changes in 2020; and 216 in 2021
- Government agencies do not notify you when changes occur
- Posting requirements (including size, font, color and foreign language mandates) and change notifications can be buried in statutes, regulations, case law, and agency website pages

RISKS OF NONCOMPLIANCE

Government Enforcement and Fines

- Government posting fines
 - As high as \$38,000+ per location for federal locations
 - State and local fines typically range from \$100-\$1,000
- Enforcement by federal agencies
 - Occupational Safety and Health Administration
 - U.S. Department of Labor
 - U.S. Equal Employment Opportunity Commission
- “Poster sweeps” by state and local agencies

Employee Lawsuits Are the Real Danger

- Failure to post can extend “statute of limitations”
- The statute of limitations is the defense that allows you to have a claim dismissed because it was filed too late
- Courts have ruled if employees don’t have notice of their rights due to a posting violation, the statute of limitations no longer applies
- Consequently, employers must defend old claims that should have been dismissed
- This can increase potential damages for back pay or lost wages

Additional Risks of Noncompliance

- Evidence of bad faith
 - Various legal standards impose additional punitive damages for bad faith, or reduce/excuse violations where there is a showing of good faith
 - Posting compliance is a factor taken into consideration
- FMLA interference of rights
 - Regulations state that posting compliance is a recognized cause of action if it results in an interference with someone's rights
 - Employers can be held responsible for an employee's back pay and other damages suffered by that employee under the FMLA
- Posting compliance is your first line of defense

5 COMPLIANCE ESSENTIALS

#1 Foreign Language Posting Requirements

- Certain postings must be displayed in Spanish regardless of your workforce demographics
 - 19 states require certain postings in Spanish for all employers
 - 47 state-issued postings in the U.S. must be posted in Spanish
- Some states and local jurisdictions require postings in multiple languages, from Russian to Japanese to Arabic
- All postings in Puerto Rico must be displayed in Spanish

#1 Foreign Language Posting Requirements

- 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

#1 Foreign Language Posting Requirements

You may have additional obligations if you employ workers who are not proficient in 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:** For state postings, fully translated Spanish poster sets are a “best practice” for locations with a significant number of Spanish-speaking workers

#2 City and County Posting Requirements

Cities and counties are now requiring labor law posters.

- **AZ** – Flagstaff, Tucson
- **CA** – Alameda, Belmont, Berkeley, Cupertino, Daly City, East Palo Alto, El Cerrito, Emeryville, Foster City, Fremont, Half Moon Bay, Hayward, 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 Carlos, San Diego, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Cruz, Santa Monica, Santa Rosa, Sonoma, South San Francisco, Sunnyvale, West Hollywood
- **CO** – Denver

#2 City and County Posting Requirements

- **FL** – Broward County, Miami Beach, Pinellas County
- **IL** – Chicago, Cook County
- **MD** – Montgomery County, Prince George’s County, Howard County
- **ME** – Portland, Rockland
- **MN** – Duluth, Minneapolis, St. Paul
- **NE** – Fremont, Lincoln

#2 City and County Posting Requirements

- **NM** – Albuquerque, Bernalillo County, Las Cruces, Santa Fe
- **NY** – New York City
- **PA** – Allegheny County, Philadelphia, Pittsburgh
- **TX** – Beaumont, Corpus Christi
- **WA** – Seattle, Tacoma

#3 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 postings change frequently and penalties for noncompliance can be severe

#3 Federal Contractor Posting Requirements

The most common postings required for federal contractors are:

- Paid Sick Leave
- Minimum Wage
- “EEO is the Law” Supplement
- Pay Transparency Statement
- DOD Hotline
- National Labor Relations Act (required by EO 13496)
- Bilingual E-Verify
- Bilingual Right to Work
- Walsh-Healey Public/Service Contracts
- DHS Hotline
- Notice to Workers with Disabilities
- Davis-Bacon Act
- DOT Federal Highway Construction

#4 Remote Workers and Telecommuters

- Businesses must provide mandatory federal, state and local labor law notices to all employees — including off-site workers
- If a business has employees who report to a physical facility less than 3-4 times a month, posters must be provided in another format, such as electronically
- An electronic solution is ideal for employees who work from home, field salespeople and other remote workers
- It's best to use a solution that pushes out mandatory updates via email alerts and tracks employee acknowledgments

#5 Job Applicant Posting Requirements

Of the six federally mandated labor law posters employers are required to display, four must be visible to job applicants:

- Family and Medical Leave Act (FMLA)
- Equal Employment Opportunity Commission (EEOC)
- Employee Polygraph Protection Act (EPPA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA) ... it's a best practice to include because the law protects applicants and employees

#5 Job Applicant Posting Requirements

There are multiple ways to comply with applicant area postings.

- If your company gets walk-in applicants, posters should be displayed where they can be seen by the candidates
- If there's a small area like a kiosk where job candidates fill out applications, the postings can be provided in a compact format
- If there's a room where interviews are conducted, it's a best practice to display full size posters in that space
- For companies that accept online applications, a link can be provided to access electronic images of the posters

SOLUTIONS TO PROTECT YOUR BUSINESS

Poster Guard Compliance Protection[®]

- This subscription service gets your business in immediate compliance with all federal, state *and* local posting requirements
- Whenever a mandatory change occurs, replacement posters are automatically shipped at no cost
- If Spanish postings or other foreign language postings are required for all employees, those are included at no charge
- 100% guarantee against fines

Additional Solutions Available

Additional solutions are available for:

- Federal Contractors
- E-Service for Remote Workers
- Intranet Licensing Service
- Applicant Posting Services
- Binder Service for Small Workspaces without Walls

THANK YOU

For more information please go to:
<https://www.posterguard.com>

Or call us at:
800-999-9111

