

FAQs re Labor/Employment Law Notices and Posters, rev May 2018

Should I post a new or revised labor law notice prior to the required posting effective date?

It is recommended as a best practice that employers post revised or newly required labor law notices on the posting effective date (not before) to be in compliance with the applicable state or federal employment laws.

I heard that some of our employment law posters have to be displayed where applicants can see them, not just our employees. Is that true?

Yes, that's true. A few federal employment laws require that some posters be displayed prominently where job applicants as well as employees will see them. The Equal Employment Opportunity is the Law (EEO), Family and Medical Leave Act (FMLA), and Employee Polygraph Protection Act (EPPA) notices must all be displayed for applicants as well as employees.

There may be state postings you're required to display for applicants as well. The law that requires the labor law poster will indicate for whom it must be displayed. For example, the Family and Medical Leave Act states that the FMLA poster must be placed "**prominently where it can be readily seen by employees and applicants for employment.**" NOTE: If you are participating in the E-Verify™ program, you are also required to post English and Spanish versions of the E-Verify™ and Right To Work notices where job applicants can see them.

How do we display employment law posters for internet applicants?

The U.S. Department of Labor indicates that employers should place a prominent notice on their job posting website stating that "Applicants have rights under Federal Employment Laws" This should be linked to three postings: Family and Medical Leave Act (FMLA), Equal Employment Opportunity (EEO) and Employee Polygraph Protection Act (EPPA).

Posting these notices on the website is not a substitute for posting them on the employer's premises, however. Employers must also display physical copies of the posters, so applicants are informed of federal employment law rights when they come to the physical company location for in-person interviews.

For employees who work at a remote job site, may we photocopy and shrink our employment law posters for their use? Is that still legal?

It is not legal for some posters to be resized. Some laws require that posters be of a certain font size and a minimum paper size (example: **OSHA's Job Safety and Health notice must be 8-1/2 by 14 inches to be compliant**). If you shrink a poster down to a size that is below the required font or notice size or make it so small it is hard to read, you may not be in compliance.

If you have more than one employee at a remote company location, **you should post all the required notices in an area frequented by those employees on a regular basis.** The requirement to post notices at the home of a single remote worker has not yet been added to any of the labor law notification regulations. But to limit liability, an employer has to notify all their employees of their rights; it would be advisable to have an electronic version of postings available. This way an employer has shown a "good faith" effort to inform the remote employee of his/her rights should an employee dispute occur.

Do we need to send a copy of all our employment law posters to employees who work from home?

An employer is obligated to make sure that all employees, no matter where they work, are informed of their employment rights. Options for home-based employees are sending them their own set of posters or making the posters available on the company intranet. If a home-based employee will be checking in at a company location or main office frequently, having the posters there will likely meet your obligations.

My employees report to a construction site. Do posters need to be posted there?

Yes, employers must display physical posters at the location employees report to each day. If employees report directly to a construction site, posters should be displayed there.

Electronic posters can be placed on the company intranet as another way to make employees aware of their rights, but employers should also have the physical posters displayed.

I have sales employees who travel. Where should I display labor law posters?

If a salesperson checks in at a certain office or another company location each day, paper employment law posters should be displayed there. If the salesperson works from home, paper posters could be sent to the employee. In

addition, electronic posters posted on the company intranet could also be used to show a good faith effort to make employees aware of rights under federal labor law.

May I use electronic versions of the notices to meet posting requirements?

Physical employment law posters are required in order to meet posting requirements. Employers must post the employment law notices in an area frequented by all employees. The Department of Labor has previously stated on their website that they are "...currently studying whether electronic means could be used to satisfy notice posting obligations. At present, however, physical posting of paper notices is required."

Some reasons why electronic versions do not meet the compliance aspects of posting employment law notices include the following:

- Federal employment laws require companies with one or more employees to post notices in an area frequented regularly by all employees.
- There is also a requirement to ensure notices are posted in a manner that eliminates the possibility of being altered or defaced (e.g. laminated posters or in a glass enclosure).
- Not all employees of a company have access to a computer on a regular basis, and by posting electronic versions, you could be assuming that all employees have the technological ability to access the notices on the company intranet.
- There are requirements on some of the posters that say they can't be covered by any other posters, which is why supplying labor law posters in a book form has been disapproved by government agencies in the past. The same could be true for postings on a company intranet.
- A company could post these notices on their intranet in addition to the published government notices for the sake of informing employees of their rights under the law, **but to be in compliance, you must at least post physical paper copies of the notices in an area frequented by all employees.**

It is not unreasonable to speculate that future federal and state regulations may also require electronic posting in addition to or in lieu of physical posting of labor law notices.

If we have more than one building at our company location, may we display posters only at the main building, or do we have to have them in every building?

It depends. You may need to display your employment law posters in each facility or office location. Displaying them only in a main building may not make them readily accessible to employees who work in other buildings, especially if they never have occasion to enter the main building for work. The requirements for notices typically say that notices should be posted "in an area frequented by all employees on a daily basis."

Do we have to have any of our posters in Spanish?

There are a few federal posting requirements that mention Spanish:

- The FMLA poster, which is required for employers with 50 or more employees, must be posted in a language other than English if a "significant" portion of workers are not literate in English. If a significant portion of workers are not literate in English, employers must post the notice in a language in which the employees are literate. The federal government does not define "significant."
- The Migrant and Seasonal Agricultural Worker Protection Act poster, which is only required for agricultural employers with migrant and seasonal workers, must be posted in Spanish or another language common to migrant or seasonal workers who are not literate in English.
- The Immigration and Nationality Act (Employee Rights Under the H-2A poster), which is required only for employers with employees who are using an H-2A visa, must be provided in any language common to a significant number of workers if they are not fluent in English.

In addition, OSHA encourages, but does not require, employers with Spanish-speaking employees to post a Spanish version of the poster.

There are also a few state posting requirements that mention Spanish. The following posters are required to be displayed in both English and Spanish:

- Arizona Workers' Compensation Notice to Employees
- The Washington, D.C., Protecting Pregnant Workers Fairness Act notice
- The Connecticut Paid Sick Leave posting
- New Mexico Notice on Human Trafficking

In addition, the Texas Workers' Compensation notice is required to be posted in English, Spanish, and any other language common to the employer's employee population.

In California, employers with workers who speak and read only Spanish must post the Minimum Wage Notice in Spanish. In addition, California employers with Spanish-speaking employees must post the Workers' Compensation Notice in Spanish.

Even when Spanish posters are not required, the Spanish version postings are highly recommended for employers with Spanish speaking/reading employees in the following states, since the agencies in these 32 states publish bilingual postings: Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maine, Michigan, Minnesota, Missouri, North Carolina, Nebraska, New Hampshire, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Washington.

It is an employer's responsibility to inform their employees, either English or Spanish speaking, of their rights under employment law.

Is there a specific place where I must display posters for employees?

They should be displayed in a common area such as a lunch room, break room, conference room, employee lounge, kitchen, near a time clock — any location employees are likely to frequent daily and view them.

If our company has break rooms on each floor of our building, do we need to post the posters in each break room, or may we have them posted only in the one lunch room?

If all your employees regularly visit the lunch room, then you may post all of the required posters there. If not, then post the posters in each break room or in another location where they can readily be seen by all employees.

Do employers need to fill in information on some state posters?

Yes, some postings require employers to add information. This information is usually company-specific, such as an emergency phone number, payday information or worker's compensation policy information.

The following states require an employer to fill in information: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, and Washington. In addition, employers in the District of Columbia must also add information to their poster.

May I put the required posters in a binder, if that binder is available to all employees?

No. Generally, federal workplace posters required by the Department of Labor must be displayed or posted in a conspicuous place where they are easily visible to all employees. There is an exception to this: the Uniformed Services Employment and Reemployment Rights Act (USERRA) poster may be provided by other methods as long as the full text of the notice is provided. Other methods may include distributing to employees by direct handling, mailing, or via email.

Can I post electronic versions of the posters on a tablet computer to meet posting requirements?

In general, posters must be displayed in conspicuous places on an employer's premises where they are visible at all times. It is not likely that posting them on a tablet computer would meet this requirement. In addition, some posters must be displayed at certain sizes. For example, the federal Occupational Safety and Health Act (OSHA) poster must be at least 8-1/2 by 14 inches.

There are a few new federal contractor postings that can be displayed electronically. This includes the federal contractor minimum wage poster and the pay transparency poster required by Executive Order 13665 (which has not yet been released). These electronic posting regulations apply only to these specific posters for federal contractors, however.

If the physical posters are also on display, it is fine to have electronic versions available as well.

What if my state's minimum wage is higher than federal? Do I still have to display the federal minimum wage poster?

Yes, the federal minimum wage poster should still be displayed. There may be employees who are not covered by the state law, and therefore would be covered under the federal minimum wage law. An employer is to pay the higher of the state or federal minimum wage, but both notices are still to be posted as the state or federal rules may differ on overtime, tipped employees, etc.

Can I be fined if I don't have a poster?

Failure to post required state and federal employment law notices can result in fines up to \$17,000. Following are some examples:

- The penalty for violating the Occupational Safety and Health Administration (OSHA) posting requirement is \$7,000.
- An employer who violates any provision of the federal Employee Polygraph Protection Act of 1988, including the posting requirement, faces a fine of up to \$10,000.
- The penalty for failing to display the Equal Employment Opportunity is the Law posting (required for employers with 15 or more workers) increased to \$210 in 2014.
- Employers with 50 or more workers are required to display the Family and Medical Leave Act (FMLA) notice, and the penalty for willful refusal to display it is \$100.
- State posting requirements can also carry penalties. For example, failure to display the Cal/OSHA safety and health protection poster carries a \$7,000 fine.

Maximum fines typically would be incurred if the employer continually and/or knowingly violated the law. State fines and penalties will vary by agency and are also determined on a case-by-case basis. A specific fine for failure to post is not always stated on the poster, even though the requirement is made clear by state law and the enforcing agency. For example, the California Healthy Workplaces, Healthy Families Act of 2014 (California Labor Code, Article 1.5, Section 274(c)) indicates that an employer who willfully violates the posting requirements is subject to a civil penalty of up to \$100 for each offense.

Why do employers need employment law posters?

State and federal employment laws/regulations require all employers with at least one employee to post at each of their locations, in an area frequented daily by all employees, all applicable, current required federal and state employment law notices. Failure to keep these notices up-to-date can result in substantial fines or frivolous employee lawsuits.

Source: https://www.jjkeller.com/shop/content_bi-laborlaw-faq

For information about the federal and AZ Notices & Posters that are required to be displayed, by threshold numbers of employees, and information about how to obtain those notices and posters, look in the **HR & EMPLOYMENT LAW COMPLIANCE GUIDE** published by **HRHelp**.

To obtain a copy of the **GUIDE**, contact **HRHelp** at: hrhelp@cox.net