

DOL Issues New Guidance on Posting Notices for Remote, Hybrid Workplaces

SHRM | Roy Maurer | 01-25-2021



The U.S. Department of Labor (DOL) recently provided guidance from the Wage and Hour Division on complying with its notice and posting requirements when employees are working remotely.

"A remote workforce poses a challenge for employers that must display certain notices and posters in their workplaces to advise employees of their rights under federal, state and local employment laws," said Susan Gross Sholinsky, an attorney in the New York City office of Epstein Becker Green. "In response to this widespread shift to remote work, the DOL bulletin clarifies how employers may comply with federal notice and posting requirements in a remote environment."

Among other provisions, it outlines when employers are permitted to disseminate the poster information exclusively in electronic form.

Sami Asaad, an attorney with FordHarrison in New York City, explained that several federal laws, including the Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA) require employers to post a notice of rights in a conspicuous location.

"Traditionally, employers satisfy the various notice requirements by placing posters on bulletin boards in well-trafficked locations such as break rooms or lobbies," he said. "Because many of these laws were passed decades before the first portable computer, few of them specifically address the concept of distributing notices using electronic means."

The guidance distinguishes between notices that must be continually posted (FLSA and FMLA posters) from notices that are provided once to each employee individually (for example, as required by the Service Contract Act).

"Employers may satisfy one-time notice requirements by e-mail delivery if employees customarily receive e-mails from the employer," Asaad said. "For continuous-posting requirements, the guidance makes a distinction between employers with only some remote employees and employers with an entirely remote workforce. For employers with some remote workers, physical posters are required for onsite employees, and the DOL encourages electronic posting for the teleworking employees. Employers with an entirely remote workforce may satisfy continuous-posting obligations using electronic-only means if all employees exclusively work remotely, customarily receive information from the employer via electronic means and have readily available access to the electronic posting at all times."

Being readily available means that employees can access the notice without having to request permission via an internal or external website or a shared network drive or file system.

Employers must inform employees of where and how to access the notices electronically.

"Posting a notice on a company website or intranet is not sufficient unless the employer already posts similar postings in such a manner on a regular basis," Sholinsky said. "Posting on an unknown or little-known website is the equivalent of posting a hard-copy poster in an inconspicuous location and fails to meet the federal requirements."

For laws that require posters be visible to job applicants—the Employee Polygraph Protection Act, for example—electronic-only posting is permitted if the hiring process is conducted remotely and the applicants have readily available access to the electronic posting at all times, Asaad said.

It's important to note that the DOL guidance only applies to posting requirements from its own agencies, such as the Occupational Safety and Health Administration or the Office of Federal Contract Compliance Programs. It does not address posting rules that are enforced by other federal agencies like the Equal Employment Opportunity Commission or National Labor Relations Board.

State and Local Requirements

The DOL guidance applies only to federal notice and posting requirements, but employers should remember that many states and cities have additional notice and posting requirements, Sholinsky said. "For example, New York's Department of Labor requires certain posters for minimum-wage information, job safety and health protection, and the like. California requires employers to post information related to medical leave and pregnancy disability leave, minimum wage, and workplace discrimination and harassment."

Recommendations

Asaad offered these tips for employers with remote workforces:

- Design an easily accessible space in your company intranet or employee portal for federal and state posters. "Consider making your company intranet or portal appear automatically on employees' computers upon logging in," he said.
- Use your employee handbook or handbook acknowledgment page to inform employees of the virtual location of postings.
- Incorporate all required notices in your applicant portal and applicant tracking system if hiring is conducted remotely.
- Visit the DOL's FirstStep Poster Advisor page for help.