



COMPLIANCE ALERT

DISTRIBUTION OF REQUIRED LABOR POSTINGS IN A REMOTE WORK WORLD

The pandemic brought a seismic shift to remote work for many in 2020. And just because employees are not reporting to a physical work location, their geography does not relieve employers of their responsibility to provide employees and applicants with the required federal, state and local labor law postings.

Interestingly, there is no centralized site that an employer can go to, in an effort to determine what posters are required for their business. In fact, most employers have to visit federal, state and local governmental sites to determine what is required - based upon their location and industry. What's more, poster requirements change often, so it is imperative that they check sites often to ensure compliance at all levels.

In past years, employers have been required to provide notices to all employees, and in some instances, ensure that the posters are posted in strategic areas so they may be seen by applicants.

With the recent, significant shift to remote work, the Department of Labor (DOL) Wage and Hour Division (WHD) has issued **updated guidance** on the way in which employers can distribute information to employees and applicants who do not report to a physical worksite. Unfortunately, the DOL's new rules only pertain to DOL-specific posters.

The DOL requirements are those postings related to the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), Section 14(c) of the FLSA (Section 14(c)), the Employee Polygraph Protection Act (EPPA) and the Service Contract Act (SCA). This means employers will have to determine, based upon their location and industry, what posters are required by other federal agencies (as well as state and local) and also determine "what is allowed" in terms of ensuring that the information reaches remote workers. Employers are still required to have these notices posted in a conspicuous location at the worksite - in addition to posting electronically as well.

This recent DOL guidance makes a distinction between notices that are required to be posted at all times, versus notices that are provided to employees one time. As far as notices which must be given to employees once (for example, those employers who must comply with the SCA requirement), must email the notice to employees IF the employee customarily receives emails from the employer. For notices that must be continuously posted, the postings can be made electronically for an entirely remote workforce. Again, an electronic posting can only be used if the employees working remotely customarily receive information from the employer electronically. Moreover, these employees must also be able to access the electronic posting at all times.