

HR COMPLIANCE OVERVIEW



DOL Guidance on Electronic Posting of Required Federal Workplace Notices

Under federal law, employers must display a number of required workplace posters and notices in a conspicuous place, where employees may easily access and read them. These required workplace postings often present an overview of labor and employment laws and employee rights.

However, with the increase of telework the U.S. Department of Labor (DOL) has also published some guidance on how employers may be able to make these postings available to employees who do not physically work at the employer's worksite and may, therefore, not otherwise be able to access these required notices.

This Compliance Overview provides information published by the DOL in [Field Assistance Bulletin \(FAB\) 2020-07](#) entitled "Electronic Posting for Purposes of the FLSA, FMLA, Section 14(c) of the FLSA, EEPA, and SCA." Employers must also comply with state and local workplace poster laws.

LINKS AND RESOURCES

- [FAB 2020-07](#)
- DOL workplace posters [webpage](#)
- DOL [elaws Poster Advisor](#)

Highlights

- ☑ require employers to "post and keep posted" or require the posting of a notice "at all times."
- ☑ Some statutory provisions permit employers to meet notice requirements by delivering individual notices to each employee.
- ☑ Electronic notices must be as effective as hard-copy postings.
- ☑ Employers must take steps to inform employees of where and how to access electronic notices.

Electronic Notices

The WHD will only consider electronic posting an acceptable substitute for the continuous posting requirement where:

1. All of the employer's employees exclusively work remotely;
2. All employees customarily receive information from the employer via electronic means; and
3. All employees have readily available access to the electronic posting at all times.

HR COMPLIANCE OVERVIEW



Introduction

As more employees work remotely due to the COVID-19 pandemic, the DOL Wage and Hour Division (WHD) has received questions from employers regarding the use of email or postings on an internet or intranet website, including shared network drive or file system, to provide employees with required notices of their statutory rights. This Field Assistance Bulletin (FAB) provides guidance to WHD field staff on when, as a matter of enforcement policy, WHD will consider these forms of electronic notice to satisfy the notice requirements under the following statutes and their corresponding regulations: 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).¹ In most cases, these electronic notices supplement but do not replace the statutory and regulatory requirements that employers post a hard-copy notice. Whether notices are provided electronically or in hard-copy format, it is an employer's obligation to provide the required notices to all affected individuals.²

Continuous Posting

As explained below, several of the statutes and their corresponding regulations administered by WHD, such as the FLSA, and FMLA, require employers to "post and keep posted" or require the posting of a notice "at all times" and, thus do not permit employers to meet their notice obligations through a direct mailing or other single notice to employees. If a statute and its regulations require a notice to be continuously posted at a worksite, in most cases, WHD will only consider electronic posting an acceptable substitute for the continuous posting requirement where (1) all of the employer's employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times. This ensures the electronic posting satisfies the statutory and regulatory requirements that such postings be continuously accessible to employees. Where an employer has employees on-site and other employees teleworking full-time, for example, the employer may supplement a hard-copy posting requirement with electronic posting and the Department would encourage both methods of posting.

Individual Notices

As explained below, some of the statutory provisions discussed in this FAB, such as the SCA and Section 14(c), permit employers to meet notice requirements by delivering individual notices to each employee. Where particular statutes and regulations permit delivery of notices to individual employees, the notice requirements may be met via email delivery (or another similar method of electronic delivery), only if the employee customarily receives information from the employer electronically. This is consistent with WHD's existing regulations, which permit electronic delivery of required communications only where employees already regularly use such electronic communications. See, e.g., 29 C.F.R. §§ 13.26, 13.5.

Access

If an employer seeks to meet a worksite posting requirement through electronic means, such as on an intranet site, internet website, or shared network drive or file system posting, the electronic notice must be as effective as a hard-copy

¹ WHD issued Field Assistance Bulletin No. 2019-3 on March 15, 2019 on the subject of compliance with the H-1B Notice Requirement by Electronic Posting, and nothing in this FAB replaces the guidance in that previously issued Field Assistance Bulletin.

² EPPA and FMLA also require notices to be readily seen by both employees and applicants for employment. 29 C.F.R. §§ 801.6, 825.300(a)(1).

HR COMPLIANCE OVERVIEW



posting. As a number of the statutory provisions below require that affected individuals be able to readily see a copy of the required postings, where an employer chooses to meet a worksite posting requirement through electronic means, the same requirements apply in the electronic format. As a practical matter, a determination of whether affected individuals can readily see an electronic posting depends on the facts. For instance, the affected individuals must be capable of accessing the electronic posting without having to specifically request permission to view a file or access a computer. See, e.g., Field Assistance Bulletin No. 2019-3. Consistent with its existing regulations, WHD will not consider electronic posting on a website or intranet to be an effective means of providing notice if an employer does not customarily post notices to affected employees or other affected individuals electronically. See, e.g., 29 C.F.R. §§ 13.26, 13.5

Furthermore, consistent with WHD practice, if the employer has not taken steps to inform employees of where and how to access the notice electronically, WHD will not consider the employer to have complied with the posting requirement. See, e.g., Field Assistance Bulletin No. 2019-3. Posting on an unknown or little-known electronic location has the effect of hiding the notice, similar to posting a hard-copy notice in an inconspicuous place, such as a custodial closet or little-visited basement. Moreover, if the affected individuals cannot easily determine which electronic posting is applicable to them and their worksite, WHD will consider the posting insufficient.

Fair Labor Standards Act

An employer employing any employees subject to the FLSA's minimum wage, overtime, or Break Time for Nursing Mothers provisions is required to post and keep posted a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy, see 29 C.F.R. § 516.4. Given the requirement that employers maintain a continuous FLSA posting in every establishment where employees are employed where every employee can readily observe a copy, WHD will consider an electronic posting to be sufficient to meet the above requirements only if (1) all of the employer's employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times. For example, where all employees exclusively work from home and communicate with the employer through electronic means, an employer may satisfy the FLSA posting requirements by posting the required FLSA notice on an employee information internal or external website, or shared network drive or file system that is accessible at all times to all employees. In this circumstance, where there is no physical establishment where employees are employed and employees can access the electronic posting at any time, WHD will consider such electronic posting to meet the regulatory requirements that the notice be posted in a conspicuous place where employees are employed so as to permit them to readily observe a copy. See 29 C.F.R. § 516.4.

Family and Medical Leave Act

The FMLA regulations permit electronic posting of the general FMLA notice as long as the electronic posting otherwise meets the regulatory posting requirements, which require each employer covered by the FMLA to post and keep posted, in conspicuous places on the premises where employees are employed a general notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints of violations of the FMLA with WHD. 29 U.S.C. § 2619(a); 29 C.F.R. § 825.300(a)(1). The notice must be posted prominently where it can be readily seen by employees and applicants for employment, and the poster and text must be large enough to be easily read and contain fully legible text. 29 C.F.R. § 825.300(a)(1). Consistent with the statute and its implementing regulations, WHD will consider electronic posting to satisfy the FMLA posting requirements where, for example, all hiring and work is done remotely and an employer posts the appropriate FMLA notice on an internal or external website that is accessible to all employees and applicants. In this circumstance, where there is no physical establishment where employees are employed or where

HR COMPLIANCE OVERVIEW



interviewing or hiring takes place and the electronic posting is accessible to employees and applicants at all times, WHD will consider such electronic posting to meet the regulatory requirements that the notice be posted in a conspicuous place where employees are employed so as to permit employees and applicants to readily observe a copy. See 29 C.F.R. 825.300(a)(1).

Section 14(c) of the Fair Labor Standards Act

An employer who has workers employed under Section 14(c) subminimum wage certificates is required at all times to display and make available to employees a poster as prescribed and supplied by the Administrator. 29 C.F.R. § 525.14. Such a poster must explain, in general terms, the conditions under which subminimum wages may be paid and shall be posted in a conspicuous place on the employer's premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers. Id. Where the employer finds it inappropriate to post such a notice, the regulations permit an employer to satisfy this requirement by providing the poster directly to all employees subject to its terms. Id. Therefore, if an employer finds it inappropriate to post a physical notice to employees, an employer may satisfy the Section 14(c) posting requirements in 29 C.F.R. § 525.14 by emailing or direct mailing the poster to workers employed under 14(c) subminimum wage certificates or, where appropriate, the parents and/or guardians of such employees.

Employee Polygraph Protection Act

An employer subject to the Employee Polygraph Protection Act (EPPA) must post and keep posted a notice explaining the EPPA in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment. 29 C.F.R. § 801.6. Given the requirement that employers maintain a continuous EPPA workplace posting, electronic posting may be sufficient to meet this posting requirement if, as discussed above, (1) all employees exclusively work remotely and the hiring process for applicants occurs remotely, (2) all employees and applicants customarily receive information from the employer via electronic means, and (3) all employees or applicants have readily available access to the electronic posting at all times. For example, where all hiring and work is done remotely and employees and applicants communicate with the employer via electronic means, an employer may satisfy the EPPA posting requirements by posting this notice on an employee information internal or external website, or network shared drive or filing system that is accessible at all times to all employees and applicants. In this circumstance, where there is no physical establishment where employees are employed or where interviewing or hiring takes place and employees and applicants can access the electronic posting at all times, WHD will consider such electronic posting to meet the regulatory requirements that the notice be posted in a prominent or conspicuous place where employees are employed so as to permit employees and applicants to readily observe a copy. See 29 C.F.R. § 801.6.

Service Contract Act All contractors and subcontractors (hereafter referred to generally as contractors) subject to the SCA working on contracts in excess of \$2,500 are required to notify employees commencing work on which the SCA applies of the required compensation and fringe benefits by using WH Publication 1313 and any applicable wage determination to provide such notice. See 41 § U.S.C. 6703(4); 29 C.F.R. §§ 4.183-4.184. This notice may be delivered to each employee (including via email, if email is customarily used by that employee to communicate with the contractor regarding their work on the contract), or posted in a prominent and accessible place at the worksite where it may be seen by employees performing work on the contract. 29 C.F.R. § 4.184. Where, as described above, (1) all of the employer's employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times, WHD would consider this worksite posting requirement to be met if an electronic posting of WH Publication 1313, and the applicable wage determination, is

HR COMPLIANCE OVERVIEW



as readily accessible to those workers as a hard-copy posting would be. As described above, an electronic posting will not be considered readily accessible if an employee must specifically request access to a computer or ask for file permissions to view the posting, and an employer must take steps to inform employees of how and where to access the electronic posting.