HR COMPLIANCE BULLETIN

DOL Issues Guidance on Electronic Posting of Labor Law Notices

On Dec. 29, 2020, the U.S. Department of Labor (DOL) issued Field Assistance Bulletin 2020-7, which addresses when the DOL will consider electronic posting by employers (by email, or an internet or intranet website) sufficient to provide employees with required notice of their statutory rights under a variety of federal labor laws.

The Bulletin was issued in response to employer questions about the use of electronic means to post notices under the following laws, as more employees work remotely due to the COVID-19 pandemic:

- The Fair Labor Standards Act (FLSA);
- The Family and Medical Leave Act (FMLA);
- The Employee Polygraph Protection Act (EPPA); and
- The Service Contract Act (SCA).

This Compliance Bulletin summarizes the current statutory and regulatory posting requirements, and explains how electronic means of satisfying these requirements can be achieved pursuant to the DOL guidance.

Action Steps

In most cases, electronic notices supplement, but do not replace, the statutory and regulatory requirements that employers post a hard-copy notice. For example, the DOL encourages both methods of posting where an employer has employees on-site and other employees teleworking full-time.

According to the DOL, **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**.

General Principles

Continuous Posting

The Bulletin outlines when electronic posting is an acceptable substitute for the continuous posting requirement contained in several statutes (i.e., requiring employers to "post and keep posted" or requiring the posting of a notice "at all times").

Individual Notices

Where delivery of notices to individual employees is permitted, email delivery (or another similar method of electronic delivery) is sufficient only if the employee customarily receives information from the employer electronically.

Access

Affected individuals must be able to readily see a copy of the required postings in electronic format, which will depend on the facts. For example, the affected individual must be capable of accessing the posting without having to specifically request permission to view a file or access a computer. The employer must take steps to inform employees of where and how to access the notice electronically.

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Federal Labor Law Posting Requirements

The following table provides an overview of the current posting requirements of the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Employee Polygraph Protection Act (EPPA) and the Service Contract Act (SCA), and how these requirements can be satisfied through electronic means.

Federal Labor Law	Statutory Posting Requirement	Electronic Posting
FLSA: Minimum wage, overtime, break time for nursing mothers provisions	An employer with any employees subject to these provisions is required to post and keep posted a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed.	Electronic posting (e.g., on an employee information internal or external website, or shared network drive or file system) will be sufficient to meet the statutory posting requirement if all employees: 1. Exclusively work remotely; 2. Customarily receive information from the employer via electronic means; and 3. Have readily available access to the electronic posting at all times.
FLSA: Section 14(c)	An employer with workers employed under Section 14(c) subminimum wage certificates is required at all times to display (in a conspicuous place) and make available a poster describing the conditions under which subminimum wages may be paid. An employer can provide the poster directly to applicable employees where it finds it inappropriate to post a physical notice.	If an employer finds it inappropriate to post a physical notice to employees, an employer may satisfy the Section 14(c) posting requirements by emailing (or direct mailing) the poster to applicable workers or, where appropriate, their parents and/or guardians.
FMLA	Each covered employer must post and keep posted, in conspicuous places on the premises where employees are employed, a general notice explaining the FMLA's provisions (among other things). Electronic posting of the general	Electronic posting is permitted where all hiring and work is done remotely and an employer posts the appropriate notice on an internal or external website that is accessible to all employees and applicants.

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	FMLA notice is permitted, as long as it otherwise meets these requirements. The notice must be posted prominently where it can be readily seen by employees and applicants.	
EPPA	Covered employers must post, and keep posted, a notice explaining the EPPA in a prominent and conspicuous place in every establishment where it can readily be observed by employees and applicants.	Electronic posting (e.g., on an employee information internal or external website, or shared network drive or file system) will be sufficient to meet the statutory posting requirement if: 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.
SCA	All covered contractors and subcontractors working on contracts in excess of $2,500 must notify employees of required compensation and fringe benefits by using WH Publication 1313, and any applicable wage determination. This notice may be delivered to each employee (including via email if certain requirements are met), or posted in a prominent and accessible place at the worksite where it may be seen by applicable employees.	An electronic posting of WH Publication 1313 and the applicable wage determination is sufficient where all employees: 1. Exclusively work remotely; 2. Customarily receive information from the employer via electronic means; and 3. Have readily available access* to the electronic posting at all times. *The electronic posting must be as readily accessible to these workers as a hard-copy posting would be.

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