



# 5 Reasons To Pay Attention To LABOR LAW POSTERS



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# 5 REASONS TO PAY ATTENTION TO EMPLOYMENT LAW POSTERS

Labor law posting compliance seems so easy. All you need to do is hang the posters on the wall and make sure they stay there, right?

Well, not quite. Posting compliance isn't that simple. When it comes to workplace posters, a number of troublesome questions can crop up:

- **Do we have the right posters on the wall?**
- **Are we posting everything we need?**
- **Are these posters outdated?**
- **Are these posters compliant?**
- **Does it matter if we are posting things that aren't required?**
- **What about our remote workers?**

Nagging questions like these show that posting compliance is anything but easy. There are hundreds of labor law posters required under hundreds of laws. Figuring out which posters to display can be frustrating if you don't understand how to overcome the challenges involved with posting compliance.

## WHY SO CHALLENGING?

If you find posting compliance complicated, you're far from alone. A number of factors make it difficult to figure out what you should post and when:

### 1. EACH POSTING IS REQUIRED BY A DIFFERENT LAW.

One reason posting compliance is complex is that there is no single law covering workplace posters. Instead, there are more than 350 federal, state, and local laws that include a section about posting. When an employer is covered by a law containing a posting requirement, then the posting that goes with the law must be displayed.

These laws have one thing in common. They require employers to post information about employee rights. Other than that, they vary.

For example, the Fair Labor Standards Act includes this requirement to post information:

§516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act.

Under this law, the Employee Rights Under the Fair Labor Standards Act poster must be displayed by all employers with workers who are covered by the Act. Because the FLSA covers almost all employees, virtually all employers need to have the FLSA poster on the wall.

Similar requirements are part of hundreds of other laws, including the federal Family and Medical Leave Act, the Occupational Health and Safety Act, and the Employee Polygraph Protection Act. There are also state and local laws that require posters, as well as some posters that apply to employers in specific industries or that have certain hazards in the workplace.

If you're in the transportation industry in New York, or use forklifts in California, for example, you need to display a special poster. The sheer number of posting requirements is enough to make your head spin.

## 2. IT CAN BE TOUGH TO KNOW WHICH POSTERS APPLY.

Because posting requirements are scattered in many different laws, it can be challenging to know which ones apply to a specific business. Every business with at least one employee will have some posting obligations, but the specific posters that are required will depend on the company's size, location, industry, and other factors.

Understanding which postings are needed in your workplace requires knowledge of which laws apply, and whether or not those laws require a poster.

### Most employers need these six federal postings:

- Employee Rights Under the Fair Labor Standards Act
- Employee Polygraph Protection Act
- Job Safety and Health: It's the Law (Occupational Safety and Health Act, OSHA)
- Your Rights Under USERRA: The Uniformed Services Employment and Reemployment Rights Act (can be posted or provided via email)
- Know Your Rights: Workplace Discrimination is Illegal (if you have 15 or more employees)
- Your Employee Rights Under the Family and Medical Leave Act (if you have 50 or more employees)



## Businesses also need to display postings required:

- By the state
- By their municipality
- Under a federal contract
- Because of their industry
- Because of other circumstances

### 3. SOME POSTING LAWS ARE VERY DETAILED.

In general, posting requirements call for employers to conspicuously display labor law posters in locations where they are visible to all employees. However, some laws contain additional details.

A poster might need to meet size requirements or have type that's a certain size. It might need to be posted in English and Spanish or another language. It might even need to be printed on a specific color of paper. To be compliant, a poster must meet all required specifications.

**For example, the Occupational Safety and Health Administration (OSHA) poster must be 8½" x 14" and have 10 point type.**

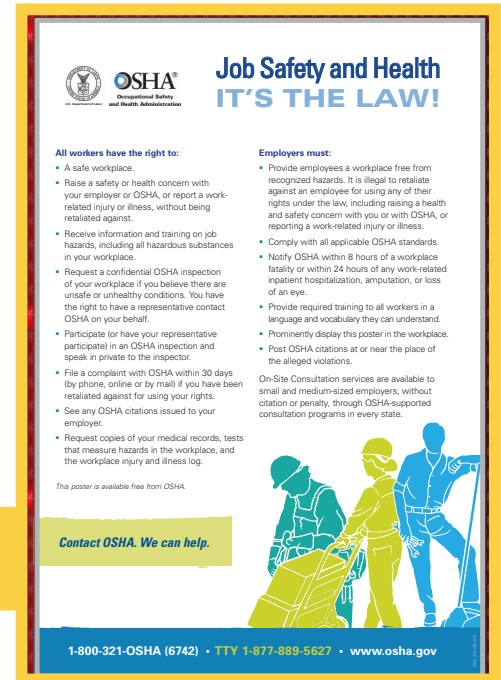
### 4. THERE'S NO UNIVERSAL POSTER WEBSITE.

Federal, state, and local agencies make workplace posters available online, but there's no single website that has links to all the posters a workplace must display. Instead, the required posters are scattered across the internet on various agency websites. Finding the postings needed in your workplace can involve a time-consuming web search.

Checking two or three state websites for poster information may not seem like it would take a great deal of effort, but when a national employer has to monitor numerous websites for all changes to federal postings as well as posting updates in 50 states, plus local posters, the District of Columbia and Puerto Rico, the process becomes extremely cumbersome.

### 5. POSTINGS CAN UPDATE AT ANY TIME.

Many people associate January 1 with poster updates and that's certainly not a bad time to check for them. Minimum wage updates and regulatory changes frequently take effect at the beginning of the year, and these changes often trigger a mandatory posting change.



Posting updates can, however, occur at any time of year. New laws and regulatory updates take effect throughout the year and, when they impact a poster, the version with the new information needs to be displayed.

**In 2023, two mandatory mid-year changes occurred:**

- The Department of Labor (DOL) updated the Employee Rights Under the Fair Labor Standards Act posting with a mandatory change that took effect in April. The poster was revised with information relating to the Providing Urgent Maternal Protections for Nursing Mothers Act (the PUMP Act). The act gave more nursing mother employees the right to have a private place to pump breastmilk (previously this right only applied to employees eligible for overtime). The poster needed an update to reflect the change to the law.
- In June, the Equal Employment Opportunity Commission (EEOC) revised the Know Your Rights: Workplace Discrimination is Illegal posting with a mandatory change to add information about the Pregnant Workers Fairness Act. The act requires covered employers to provide reasonable accommodations to a worker’s known limitations that are due to pregnancy, childbirth, or related medical conditions. When it took effect on June 27, 2023, the EEOC released an updated poster. Employers need to display this version, as it includes information about this new employee right.

Each year, about half of all posting changes occur outside of January. If you’re not watching for these updates, your posters could be outdated. A local, state, or federal agency might not publicize a poster update, and you may be surprised to learn that some of your posters are no longer compliant.

**Check your posters!**

To make sure you are complying with the most recent federal updates, make sure you are displaying the April 2023 version of the FLSA poster and the June 2023 version of the EEOC’s Know Your Rights poster. To see which version you have, look at the revision date in the lower right corner of the poster.



## WHY BOTHER TO KEEP UP?

Given all the factors that make posting compliance complicated, you might wonder if it’s worth the effort to ensure that your posters are up to date. Be assured that posting compliance is not something to neglect. Here are five reasons to stay on top of posting compliance:

### 1. PENALTIES KEEP GOING UP

Posting compliance is certainly not something federal, state, or local agencies have forgotten about. In fact, the maximum fine for federal posting violations has been increasing annually for years.

Employers must display required federal posters in a conspicuous place, and face penalties for noncompliance:

- The maximum penalty for willfully violating the Occupational Safety and Health Administration (OSHA) posting requirement could reach \$15,625;
- An employer violating any provision of the Employee Polygraph Protection Act of 1988, including the posting requirement, faces a fine of up to \$24,793;

## COMMON POSTING CHANGES

**Minimum wage**

**Discrimination**

**Paid Leave**

**Workers Comp**

**Job Safety and Health**

- Covered employers who do not post a notice of anti-discrimination rights (“Know Your Rights: Workplace Discrimination is Illegal”) face a fine of \$659; and
- Employers covered by the Family and Medical Leave Act (FMLA) who willfully refuse to display the notice could be fined \$204.

Federal regulations require agencies to adjust penalties for inflation each year under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

The increases underscore the importance of properly displaying labor law posters. While a fine for failing to display a poster is rare, and would likely only be levied in situations where an employer willfully violated the law, the fact that federal agencies are meticulous in adjusting the maximum penalties each year shows that the agencies take posting compliance seriously.

## 2. AUDITORS AND EMPLOYEES ARE CHECKING

Posting regulation compliance is also important because auditors often check to make sure current posters are properly displayed. Auditors want to make sure employers are following the law. When a poster is required, it’s on their checklist.

For example, in 2018, the federal Wage and Hour Division investigated a city agency in Michigan to see if it was complying with the Break Time for Nursing Mothers provision of the Fair Labor Standards Act (FLSA). In addition to finding that the city did not provide enough lactation sites for employees, investigators found that the city failed to post FLSA posters, which include information about the law.

Employees might also be looking to make sure posters are properly displayed. Improperly displayed postings were part of a complaint filed by employees of a California restaurant in 2018. They said their employer denied their rights to overtime, sick time, and health care support, and that they could not read the poster that explained their rights because it was in English and was placed too high on the wall. As part of a lawsuit settlement, the owner agreed to post a Spanish-language announcement explaining workplace rights.

### Good faith effort

Properly displaying labor law posters is a step you can take to document the fact that good-faith efforts are being made to be in compliance with government regulations. The purchase of posters can be documented to show that you are staying up to date with posting requirements.

The fact that the posters are hanging on the wall in conspicuous locations for all employees to see clearly demonstrates your efforts to make employees aware of their rights.

## 3. POSTERS CAN IMPACT LAWSUIT RISK

Properly displayed posters make employees aware of their rights under the law. Failure to properly display them deprives employees of vital information, and may give them additional time to file a lawsuit if they believe their rights have



## POSTER COMPLIANCE IS IMPORTANT

because auditors often check to make sure that current posters are properly displayed.



been denied. Courts have held that if posters are not displayed, the deadline to sue an employer may be extended.

**Case No. 1:** An employer failed to display a notice informing an employee of his rights under the Age Discrimination in Employment Act. This information was on the “Equal Employment Opportunity is the Law” poster (is it now on the “Know Your Rights: Workplace Discrimination is Illegal” poster) from the Equal Employment Opportunity Commission (EEOC).

Employees normally have 180 days from the day discrimination took place to file a lawsuit. Because the poster was not displayed, the employee was not aware of this time limit. The court noted that Congress included a posting requirement in the law to make sure employees would be informed of their rights. The employer’s failure to post the notice prevented the employee from learning about his rights when he was discharged. As a result, the court granted the employee additional time to file a lawsuit.

[*Vance v. Whirlpool Corp.*, 716 F.2d 1010 (4th Cir. 1983)]

**Case No. 2:** A court issued a similar ruling in a case involving the Fair Labor Standards Act (FLSA) poster. An employee claimed she had not been paid the minimum wage, and her claims were initially dismissed because she had not filed them in time.

The court, however, found that the time limit did not apply because the FLSA poster was not displayed as required by the law. The employee’s lawsuit was allowed to proceed.

[*Cruz v. Maypa et al.*, No. 13-2363 (4th Cir. 2014)]

## An employer prevails

Being in compliance with posting regulations can benefit employers, as it can show that employees have been made aware of their rights under the law. In a case decided by the Seventh Circuit Court of Appeals in July 2016, displaying the proper posters helped an employer prevail in a lawsuit.

In the case, a restaurant employee contended that his employer violated the FLSA because it failed to give servers required wage information. The restaurant included some information in a handbook, but the employee said it did not provide enough details about the rules for tipped employees.

The employer did put up the FLSA minimum wage poster, which contains tip credit information. The court ruled that because the poster was displayed, the restaurant provided the necessary information to the employee. In its opinion, the court stated, “If posters don’t count, what’s the point of requiring them?”

Displaying posters is an effective way to demonstrate good-faith compliance efforts.

[*Robert Schaefer, et al., v. Walker Bros. Enterprises, Inc., et al.*, No. 15-1058, United States Court of Appeals for the Seventh Circuit (2016)]



## 4. POSTERS REMAIN RELEVANT

Displaying posters might seem like an old-fashioned way to present information. However, it's far from out of style. Federal, state, and local agencies continue to point to posters as an essential means of communicating with employees and making them aware of their rights.

**Requirement added:** In 2014, the federal government realized that the lack of a posting requirement left a communications gap. That year the Department of Labor (DOL) published a rule establishing a minimum wage for federal contractors.

As proposed, the rule did not include a posting requirement. However, the agency added a posting requirement to the final version because of comments that the proposed rule did not include a way to keep covered workers informed of their rights.

The posting requirement was included as a way to raise awareness. In addition, the agency continues to use the poster as a way of keeping workers up to date on the law's requirements. Each year, the agency updates the poster with the latest rate information.

**States and cities see value:** Over the past few years, many states and cities have passed new laws that include a posting requirement. Here are a few of them:

- Louisiana: Pregnancy Accommodation
- Nevada: AB 190 Required Posting, AB 307 Required Posting
- New Jersey: Employee Misclassification
- New Mexico: Paid Sick Leave
- New York: Veterans Benefits and Services, Whistleblower
- Virginia: Seizure First Aid
- Foster City, California: Minimum Wage
- Hayward, California: Minimum Wage
- Half Moon Bay, California: Minimum Wage

**Critical information:** During the COVID-19 pandemic, the DOL again demonstrated its faith in posters by including a posting requirement in the Families First Coronavirus Response Act (FFCRA). The act required covered employers to provide employees with leave for reasons related to COVID-19.

To make employees aware of their rights under the law, the agency created two posters (one for private employers and one for public employers). While the FFCRA was in effect these posters delivered important information to workers about their leave rights.

Although the FFCRA posting requirement expired at the end of 2020, and employers no longer need to display the posting, the fact that the agency included it in a law at a time of national crisis shows how much it values posters.

Physical posters must be displayed at the worksite. Electronic posters may be used to supplement the physical posters.

## POSTING COMPLIANCE FOR REMOTE WORKERS

When employees work from home, electronic posters are a great way to make them aware of their rights under the law. The DOL has provided some guidance on when they are required:

### ALL WORKERS ARE REMOTE

If all workers are remote, and the company usually communicates with employees electronically, then electronic posters meet DOL posting requirements. Essentially electronic posters are required if all employees work remotely.

### SOME REMOTE WORKERS

If some workers are in the office and other workers are remote, the use of electronic posters is encouraged by the DOL.

*Note: Another federal agency, the Equal Employment Opportunity Commission (EEOC), says electronic posting may satisfy posting requirements for remote employees, so electronic posting is highly recommended for all remote workers.*

### ALL WORKERS ON-SITE

Physical posters must be displayed at the worksite. Electronic posters may be used to supplement the physical posters.





**Remote workers:** The popularity of remote work has led the DOL to address posting compliance for this segment of the American workforce. In December 2020, the DOL released general guidance on fulfilling other posting requirements for remote workers. This concerted effort shows the agency’s commitment to using posters to share information about employee rights with all employees, no matter where they work.

## 5. CHANGE HAPPENS

Federal, state, and local agencies are not shy about revising posters when a law is updated. Because of this, it’s important to pay attention to posters to make sure they’re not outdated. Federal, state, and local agencies make many mandatory changes to labor law posters each year

Updates may be due to:

- A minimum wage increase
- Additional anti-discrimination protections
- New accommodation provisions
- Changes to unemployment regulations
- Workers’ compensation law updates
- A new law taking effect
- Other regulatory changes

These states typically have an annual update to one or more postings:

- Alaska
- Arizona
- Colorado
- District of Columbia
- Florida
- Maine
- Maryland
- Minnesota
- Missouri
- Montana
- Nevada
- New York
- Ohio
- Oregon
- Rhode Island
- South Dakota
- Vermont
- Virginia
- Washington

# NUMBER OF LABOR LAW STATE POSTING CHANGES

YEAR	NUMBER OF CHANGES
2017	41
2018	48
2019	66
2020	61
2021	57
2022	69
2023	40 and counting

## 2023: TWO MANDATORY FEDERAL POSTING CHANGES

In June 2023, the EEOC updated the “Know Your Rights: Workplace Discrimination is Illegal” posting. The agency added information to the posting about the Pregnant Workers’ Fairness Act which went into effect on June 27. This mandatory change followed an April 2023 mandatory change to the Fair Labor Standards Act posting, and a minor change to the FMLA posting. and the first update to the EEOC’s poster since 2009.

# MINOR VS. MANDATORY

*Not every change made to a labor law posting requires a new poster to be displayed. A change to a poster may be minor or mandatory.*

## MINOR CHANGE

A state may revise a poster to include a new telephone number, address, or commissioner name. In these cases, it's likely that the revision is minor and the revised version of the poster is not required. A business would remain in compliance with the most recent mandatory version of the poster.

## MANDATORY CHANGE

When a poster is revised in response to a change in the law, the change is mandatory. An employer is required to display the updated version of the poster to remain in compliance. This change may involve significant changes to the poster text, or the addition of only a few words. It doesn't matter how different the poster looks or how much text has been revised. If a change to the law is behind the update, the new version of the poster needs to be placed on the wall.

**It's not the amount of text that changes, but the reason it changed that determines whether a change is minor or mandatory.**

### HOW CAN I TELL?

The nature of a posting update might not be obvious, but things to watch for include:

- An announcement from a federal, state, or local agency of a mandatory posting update,
- A notice of an update on an agency posting website, and
- A change in the law that relates to the updated posting.

Some changes, such as minimum wage updates, typically occur on a regular schedule. Other changes are less predictable. Whether you're expecting a change or not, however, an updated poster must be displayed when the change is mandatory.

The chart of annual posting updates shows that states and the federal government have been very active in making mandatory posting changes in recent years.

### Under the radar

While government agencies view posters as an effective way of raising employee awareness of their workplace rights, agencies do not always make it easy to stay on top of posting changes. Even an employer who is aware of the importance of displaying the most current version of employment law posters can be surprised by a required update.

Some local, state, and federal poster changes are widely publicized, but some can be obscure, creating challenges in staying current with required postings.

**State updates:** Sometimes the delayed release of a poster update makes it challenging to stay on top of required changes. A state agency may update its poster long after a law has taken effect. For example:

- Illinois updated its Victims' Economic Security and Safety Act (VESSA) posting with a mandatory change in March 2021 due to a change in the law that took effect in January 2020.
- Louisiana updates its Earned Income Credit posting each year with a change that takes effect on January 1. However, the state may release the updated poster any time between February and July.
- New Jersey's SAFE Act was updated in 2019. However, the state did not release a revised poster until May 2023.

The timing of poster updates can make them easy to miss. No matter when a revised posting is released, however, an employer needs to display the new mandatory version.



## CONCLUSION

Posting compliance is certainly not something to take lightly. Actions by federal agencies show that they take posting regulations seriously and continue to consider workplace posters to be a significant means of keeping employees apprised of their rights under the law.

It's important to stay on top of changes and new requirements. If an employee has questions about an employment right, your posters need to include the most recent required information. In the event of an audit, your posters need to be current and compliant.

While posting compliance is an important part of running a solid business, keeping up with posting requirements can be time-consuming and cumbersome. The solution for an employer that wants to remain compliant with posting requirements, but lacks the staff and expertise to do so, may be to find a reliable service that will ensure all of the company's locations are kept up to date with compliant employment law posters.

The service should be experienced in monitoring local, state, and federal websites for changes, have a deep base of knowledge in applicable laws, and be in regular contact with government agencies in order to respond to changes as soon as they occur. In addition, the service should readily communicate information about mandatory posting changes and be forthcoming about which posters are needed by a particular workplace.

Whether you decide to keep track of changes in-house or delegate that responsibility to an update service, it's important to keep on top of posting changes so the correct versions of required posters are on display. Postings are a proven way to keep workers aware of their rights and responsibilities, and show that you are making a good-faith effort to comply with government regulations. In addition, an employer who ignores posting regulations can be in danger of incurring significant fines or an increased risk of an employee lawsuit. While it's not always easy to keep up with the latest posting requirements, the significant role posters play in regulatory compliance makes it worth the effort.

# WE'RE HERE TO HELP

As the nation's leader in regulatory compliance and best practices expertise, J. J. Keller is your reliable source for help in complying with employment law and reducing the risk of litigation. In addition to DOL, we cover DOT, OSHA, EPA, and other agencies.

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### ELECTRONIC UPDATE SERVICE

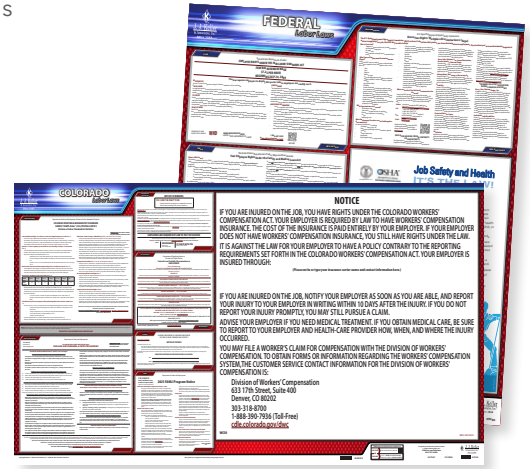
J. J. Keller's electronic update service makes it easy to share key compliance information with employees no matter their location. Subscribe today and easily:

- Reference federal, state and local change notices at any time on any device
- Share change notices with employees via email or company intranet
- View and track which employees have reviewed change notices

### FEDERAL CONTRACTOR POSTERS

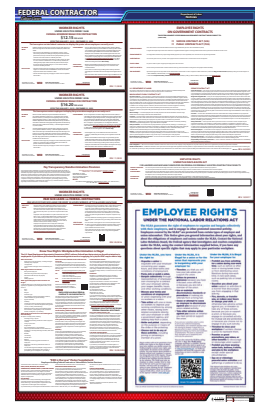
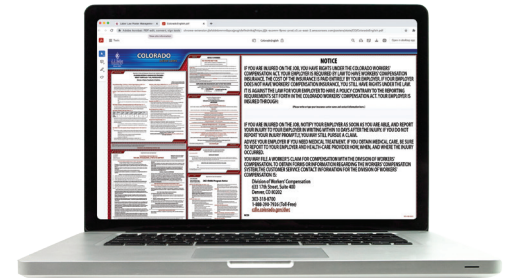
Available in English and Spanish, federal labor law posters from J. J. Keller combine eight commonly required postings for federal contractors and subcontractors (NRLA, DBA, PCA, SCA, EEO, MWC, Pay Transparency Policy Statement, and Paid Sick Leave) on one convenient poster, and come backed by our in-house team of regulatory experts. Laminated poster measures 24" x 40".

For more information, call 800-327-6868 or visit [JJKeller.com/LaborLaw](http://JJKeller.com/LaborLaw)



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Terri L. Dougherty, PHR, SHRM-CP, J. J. Keller & Associates, Inc.

Terri joined the J. J. Keller team in 2011 and is an editor on the human resources publishing team.

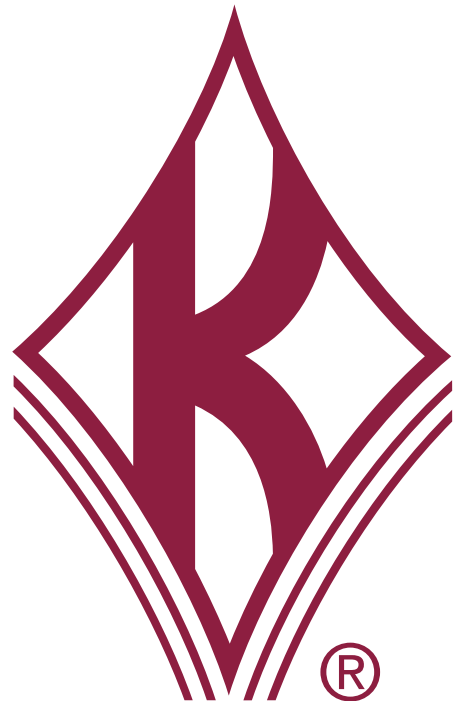
She stays on top of employment law poster updates and makes sure J. J. Keller's labor law poster content is complaint. Terri answers hundreds of questions about posting compliance each year and speaks about labor law posters at national conferences.



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