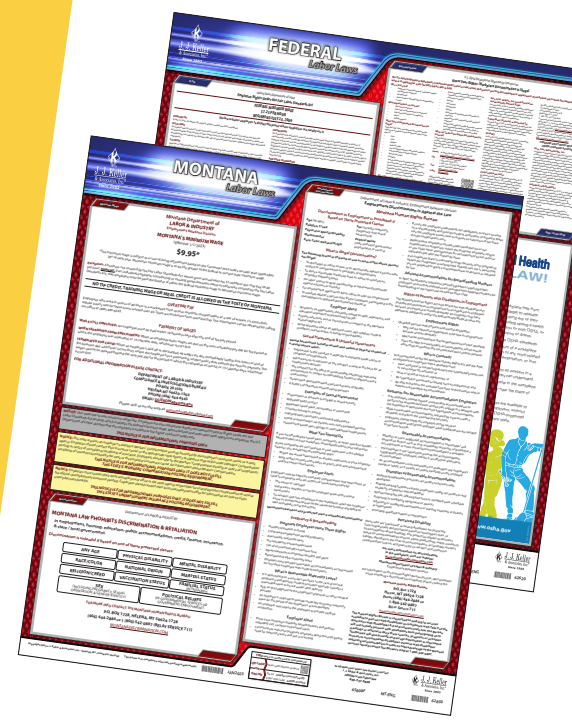


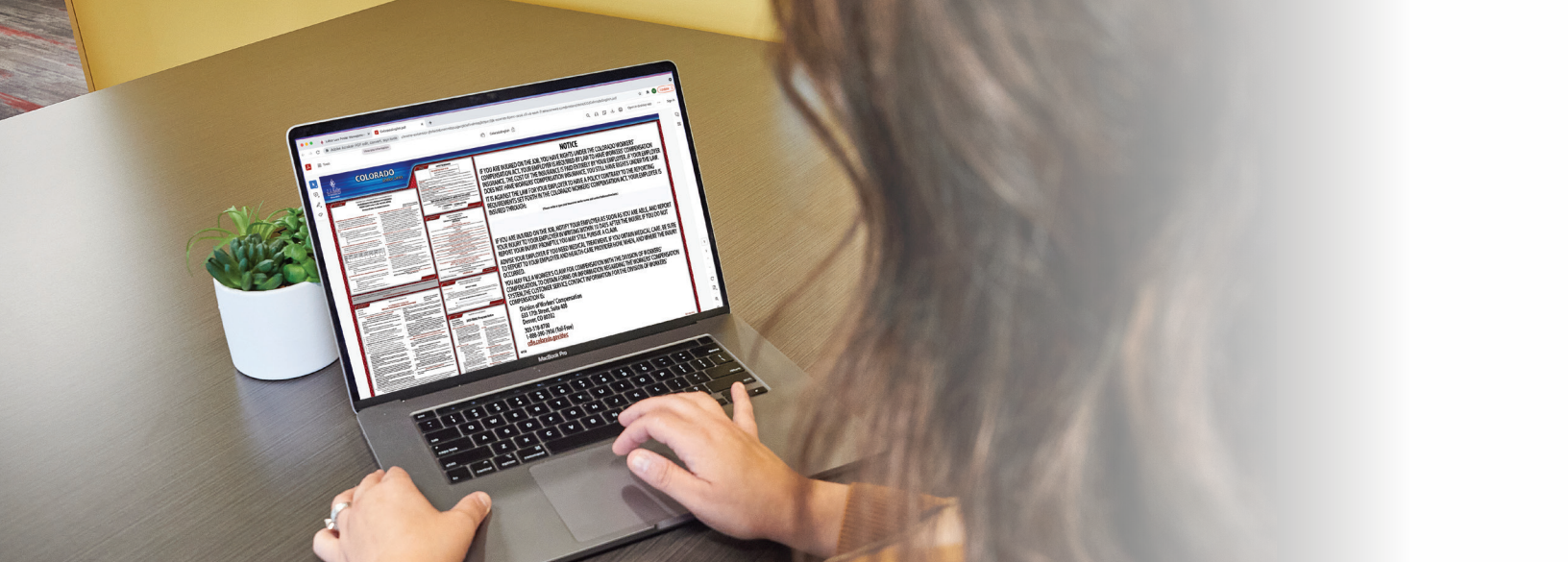


ELECTRONIC POSTERS

AND REMOTE WORKERS

Complying when employees work from home





REMOTE WORKER POSTING REQUIREMENTS

How do you comply when workers are at home?

REMOTE WORKER TREND RAISES POSTING QUESTIONS

More employees are working from home, walking down the hall to their home office rather than driving to a worksite.

Your remote workers probably don't miss battling traffic every day, although there is one thing they might be missing out on. And no, it's not free coffee.

Labor law posters need to be posted in a conspicuous location where employees report to work each day. When employees come to the office that can be accomplished fairly easily. Employees view posters placed in break rooms, near common entrances, or next to a time clock. But what do you do when employees are working from home?

COMPLYING WITH POSTING REGULATIONS - MANY, MANY POSTING REGULATIONS

To understand how to comply with posting requirements for remote workers, it helps to look at why employment posters are displayed. The short answer is, it's the law.

It's not just one law, however. Every time a law is passed, it includes many provisions, and one of them could require employers to display a poster that includes information about the law. This isn't part of every law, but there are more than 350 federal, state, and local laws that contain a posting requirement.

The goal of these requirements is to make employees aware of the law and their rights. These provisions are often found in laws relating to federal, state, or local minimum wage rates, anti-discrimination rights, and family and medical leave. In addition, they're part of a myriad of other statutes relating to employee rights.

**POSTING
REQUIREMENTS
CAN BE FOUND IN
FEDERAL, STATE,
AND LOCAL LAWS.**



MOST EMPLOYERS NEED TO POST THESE FEDERAL POSTERS:

- 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)
- 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*)
- Your Rights Under USERRA (Uniformed Services Employment and Reemployment Rights Act) (*This can be posted or provided in another way, such as via email*)

HERE'S WHAT A FEW OF THESE REQUIREMENTS LOOK LIKE:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Code of Federal Regulations, Title 29, §1627.10 **NOTICES TO BE POSTED.**

Every employer, employment agency, and labor organization which has an obligation under the Age Discrimination in Employment Act of 1967 shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such a notice must be posted in prominent and accessible places where it can readily be observed by employees, applicants for employment and union members.

FAIR LABOR STANDARDS ACT

Code of Federal Regulations, Title 29, §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, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy.

OCCUPATIONAL SAFETY AND HEALTH ACT

Code of Federal Regulations, Title 29, §1903.2 **POSTING OF NOTICE**

(a)(1) Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

INTERNET? WHAT'S THAT?

These laws all require posters to be displayed conspicuously, but none mention what this means for remote workers. Businesses must also comply with state and local posting requirements, and the majority of these are also silent on the issue of posting for employees who work from home.

A few laws do contain additional details about things such as a poster's size or color. The Job Safety and Health poster from the Occupational Safety and Health Administration (OSHA) needs to be at least 8½" x 14" in size and the text size must be at least 10 point, for example. And if you're in Maryland, the workers' compensation poster needs to be printed on gold or yellow paper.

Most of these laws were written before the internet was a consideration, however. As a result, most don't address electronic posting. When a law refers to "posting," it typically means placing a physical poster on the wall.



WHEN THE LAW REFERS TO "POSTING," IT USUALLY MEANS PLACING A PHYSICAL POSTER ON THE WALL.

YOU'VE GOT MAIL ... AND OTHER ONLINE OPTIONS

In a few newer laws, electronic posting is mentioned. This could be an option or a requirement, depending on how the law is written. A few examples are shown here:



FAMILY AND MEDICAL LEAVE ACT:

The Family and Medical Leave Act (FMLA), a relative youngster in the regulatory world with an enactment date of February 5, 1993, notes that "Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section." The other requirements include making sure:

- It's posted prominently,
- It's placed where it can be readily seen by employees and applicants, and
- The poster and text are large enough to be easily read.



UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA):

Another 1990s-era law that mentions an electronic option is the Uniformed Services Employment and Reemployment Rights Act (USERRA). The law took effect on October 13, 1994, and includes a notice requirement that may be met by posting the text or providing it in another way, such as via email.



NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS:

It's rare that a poster must be displayed both on paper and online, but one posting for federal contractors includes this requirement. The Notification of Employee Rights Under Federal Labor Laws poster for federal contractors needs to be displayed in an office or plant. It must also be posted online if an employer posts notices to employees electronically.

GUIDANCE FROM THE DEPARTMENT OF LABOR

While few laws provide clear instructions on how to comply with posting requirements for remote workers, some federal agencies have stepped in with guidance. This helps fill the information gap.

The growing popularity of remote work led the Department of Labor (DOL) to issue guidance on electronic posting in late 2020. It recognized that employers had questions and looked to the statutes for answers. The agency analyzed posting requirements in the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Employee Polygraph Protection Act (EPPA) and determined how employers could best make postings conspicuous and accessible to remote workers.

WORKFORCE MAKEUP

When it comes to whether or not electronic posters are required for remote workers, the DOL considers the makeup of a company's workforce. The agency draws a distinction between employers with no remote workers, some remote workers, and employers whose workforce is completely remote.

NO REMOTE WORKERS

All workers report to a worksite.

- Paper posters must be conspicuously displayed where they are visible to workers.
- Electronic posting can be used to supplement physical posters.

SOME REMOTE WORKERS

A business has some employees who work from home and some who work in an office.

- The DOL encourages employers to use electronic postings for remote workers.
- Hard-copy posters must be displayed in an employer's physical locations, even when electronic postings are available.

ALL WORKERS ARE REMOTE

All employees telecommute.

- Electronic posting alone meets posting requirements if:
- All employees exclusively work remotely.
 - Employees usually get information from the employer electronically.
 - Employees have readily available access to electronic postings at all times.

ELECTRONIC POSTING COMPLIANCE

To comply with electronic posting requirements for remote workers, employers need to make sure workers can easily access the posters. This means employers need to ensure that:

- Employees do not need to ask for permission to view a file or access a computer.
- Employees have been told how to access posters electronically.
- Employees can easily determine which postings apply to them.

To meet these requirements, electronic posters can be placed on an internal or external website, shared network drive, or in a file system that is always accessible to employees.

Employers can place information about how to access the posters in an employee handbook. This helps show that employees have been made aware of how to access the electronic posters.

To make electronic postings accessible, employers can consider offering a link on an intranet. To help employees understand which postings apply, employers can group them as federal postings (which apply to all covered workers) and by state. Postings that apply to employees who are working on federal contracts can be grouped together as well.

SPECIAL CONSIDERATIONS

The DOL also addresses how electronic posting applies when the law allows a notice to be directly delivered to an employee. This is the case with the Service Contracts Act (SCA) notice for federal contractors and the subminimum wage notice.

SERVICE CONTRACTS ACT (SCA): Federal contractors with a service contract of more than \$2,500 need to use a poster and any applicable wage determination to make workers aware of required compensation and fringe benefits. The notice can be delivered via email, if this is how employers usually communicate with employees. The notice can also be posted, and the posting requirement can be met with electronic posting if all employees work remotely, they usually receive information electronically, and the posting is readily accessible.

SUBMINIMUM WAGE CERTIFICATE: Employers with workers employed under a Section 14(c) minimum wage certificate need to display a poster and may satisfy this requirement by providing the poster to all covered employees. To meet this requirement, the poster can be mailed or emailed.

GUIDANCE FROM THE EEOC

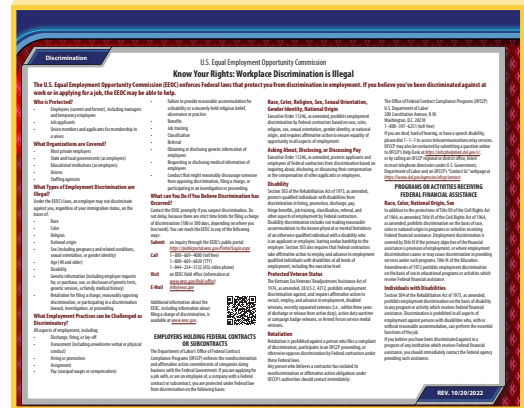
Another federal agency that provides some realistic remote worker posting guidance is the Equal Employment Opportunity Commission (EEOC).

The EEOC oversees laws that protect employees from discrimination and summarizes employee rights under these laws on the Know Your Rights: Workplace Discrimination is Illegal poster. On the poster website, the agency addresses how to make the poster available to employees who don't regularly come into the office. The EEOC states that:

“These posters should be placed in a conspicuous location in the workplace where notices to applicants and employees are customarily posted. In addition to physically posting, covered employers are encouraged to post the notice digitally on their web sites in a conspicuous location. In most cases, electronic posting supplements the physical posting requirement. In some situations (for example, for employers without a physical location or for employees who telework or work remotely and do not visit the employer's workplace on a regular basis), it may be the only posting.”

The EEOC makes it clear that electronic posting is not a substitute for displaying the physical posters at locations where employees come into the office to work. However, if an employee is working from home, and doesn't regularly visit the office, electronic posting may be necessary.

The Know Your Rights: Workplace Discrimination is Illegal poster is the only federal poster the EEOC oversees. However, this is some good, practical advice on how to make your remote workers aware of their rights under employment laws.



THE EEOC ENFORCES LAWS RELATING TO ANTI-DISCRIMINATION RIGHTS. THESE LAWS INCLUDE:

- Title VII (which prohibits employment discrimination based on race, color, religion, sex and national origin),
- The Age Discrimination in Employment Act,
- The Americans with Disabilities Act (ADA), and
- The Genetic Information Nondiscrimination Act (GINA).
- Pregnant Workers Fairness Act

POSTING TREND?

With more employees working from home, it's likely that electronic posting for remote workers will be mentioned more often in new employee rights legislation. Colorado passed a paid sick leave law with a requirement to make the posting available to employees who aren't regularly in the office. It says:

"If an employer does not have a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer shall provide the notice through electronic communication or a conspicuous posting on the web-based platform."

The law doesn't forget about physical posters, however. A paid sick leave poster still needs to be displayed at the worksite, so it's visible to employees who report to work there.

This dual approach to posting requirements – physical posting for onsite workers and electronic posting for remote employees – could very likely be the way posting regulations are heading. Electronic posting makes sense for workers who aren't coming into the office yet still need to know about workplace rights. Physical posting is still a viable solution for onsite workers since it's a visible way to share information about the law. Posting information exclusively online would diminish the impact physical posters convey. However, online posters are a practical option for workers who aren't regularly in the office.

THE ELECTRONIC POSTING SOLUTION

It's important to keep up with posting requirements, as federal, state, and local agencies take posting compliance seriously. Federal fines for noncompliance increase each year, and new state and local laws continue to require posters.

Yet more workers than ever don't see these posters regularly, as they aren't coming into an office for work. The teleworking trend was starting to take hold when the COVID-19 pandemic emerged in 2020 and kicked it into high gear. Many employees are working virtually, with the kitchen as their break room and a computer as their time clock. The labor law posters that used to be part of their everyday work life are now miles away.

The way we work is changing, and posting requirements are slowly catching up. When you're looking for a way to share employment law posters with remote workers, electronic posting is a great way to do that.

If all your employees are working remotely, the DOL requires electronic posting, and it is strongly recommended if you have any remote workers. Displaying posters onsite can show that employees have been made aware of their rights under the law. Providing remote employees with electronic postings can show that an employer is making a good faith effort to provide this information to every employee, including those who don't regularly visit the office.



WHO'S WHO

A REMOTE WORKER:

- Works at home
- Is an employee
- Is not an independent contractor
- Benefits from receiving labor law posting information through electronic posters

A REMOTE WORKER IS NOT:

- A worker in a small office
- A salesperson who stops by the main office each week
- A worker at a satellite location
- A worker onsite at a customer's office
- A worker at a construction site

When employees are onsite, placing physical posters in conspicuous areas fulfills posting requirements.

7 REMOTE EMPLOYEE POSTING FAQs

1 When are electronic postings required?

When all employees work remotely, the DOL says a business can use electronic posting to satisfy posting requirements. Essentially, they are required if everyone is remote.

The DOL also notes that, for electronic posters to be compliant, employees need to have readily available access to them. In addition, workers need to usually get information electronically.

2 Some of our employees are remote and others are in the office. Do we need electronic posters?

The DOL encourages the use of electronic posters in this situation but doesn't require them. The EEOC, which oversees the Know Your Rights: Workplace Discrimination is Illegal posting, says electronic posters may be used to meet posting requirements for remote workers.

It's certainly a best practice to make them available, as they're a great way to show that you're providing workers with information about their rights. They might also be required under a state law.

At the office, you'll need to display physical posters.

3 Which electronic posters do I need?

All employees need access to federal postings. They also need access to state and local postings that relate to where they are working. Employees who work from home should be provided with electronic posters for the state (and maybe the city) they live in.

An employee working in Hawaii, for example, needs access to the Hawaii posters. An employee for the same company who works in Alaska would need access to the Alaska posters.

4 Our employees work at a customer's location. Do they need electronic posters?

If your employees have access to labor law posters at the customer's site, they have the opportunity to view physical posters so electronic posters would not be required. Check with the customer and make sure they have required, up-to-date posters displayed in an area where your employees can view them.

5 Our sales associates travel but stop by the office each week for a meeting. Do they need electronic posters?

No, posting requirements are covered at the worksite if visits to the office are frequent enough and posters are visibly displayed.

6 What about remote employees who visit our office a few times a year?

Electronic posting is recommended. Having access to paper posters a few times a year isn't enough.

7 What do we do for construction employees who report to the construction site each day?

Physical posters should be displayed at the construction site.

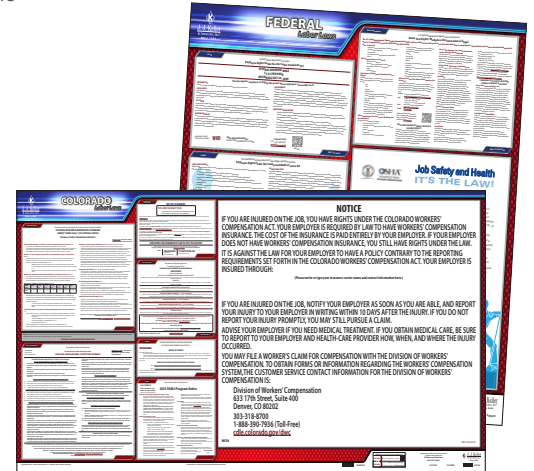
Options include placing the posters in a job trailer or on a piece of plywood at the site entrance.

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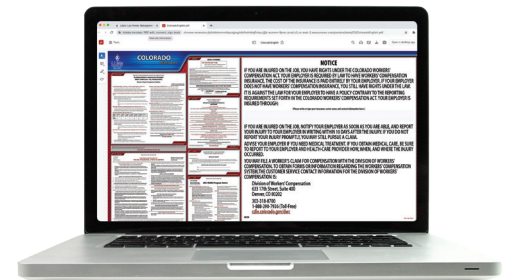
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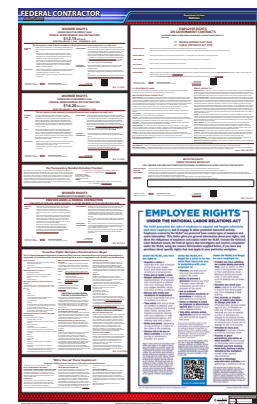
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For more information, call 800-327-6868 or visit JJKeller.com/LaborLaw

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