

Labor Law Postings:

10 Common Myths That Put Businesses at Risk

July 2019



What We'll Cover

- Common myths/mistakes that put businesses at risk
- How posting laws affect remote workers
- Federal contractor and industry-specific requirements
- Foreign language postings
- Rapidly growing city and county requirements
- Expanded employee notification requirements (beyond labor law posters)
- And more!

Posting Compliance Overview

- All employers must post federal, state and local (if applicable) postings
- Mandatory federal posters include:
 - EEOC
 - OSHA
 - FMLA
 - USERRA
 - FLSA
 - EPPA
- Up to 15 additional state-specific posters
- Up to 10 additional posters for city/county compliance
- Additional posters for government contractors and certain industries

Myth #1: Ignoring Posting Laws Carries No Risk

- Government posting fines
 - Federal fines recently increased from \$17,000 to \$35,000+
 - State and local fines typically range from \$100-\$1,000
- Enforcement of underlying laws by federal agencies
 - Occupational Safety and Health Administration
 - U.S. Department of Labor
 - U.S. Equal Employment Opportunity Commission
- “Poster sweeps” by state and local agencies

Myth #1: Ignoring Posting Laws Carries No Risk (*continued*)

- Employee lawsuits are the real danger
- Failure to post extends “statute of limitations”
 - Forces employers to unnecessarily defend old claims that should have been dismissed as time-barred
 - Expands potential damages for back pay or lost wages
- Evidence of bad faith
 - Various legal standards impose additional damages for bad faith, or reduce damages based on a showing of good faith
 - Posting compliance is a factor considered under these standards
- FMLA interference of rights

Myth #2: Federal and State Agencies Are the Only Authorities That Issue Postings

- Growing Trend: Many Cities and Counties Now Require Labor Law Postings
- For example:
 - AZ – Flagstaff, Tucson
 - CA – Alameda, Belmont, Berkeley, Cupertino, Daly City, El Cerrito, Emeryville, Fremont, Los Altos, Los Angeles, Los Angeles County (Unincorporated Areas), Milpitas, Mountain View, Oakland, Palo Alto, Pasadena, Redwood City, Richmond, San Diego, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Cruz, Santa Monica, Sunnyvale
 - CO – Denver
 - FL – Broward County, Miami Beach, St. Petersburg
 - IL – Chicago, Cook County
 - MD – Montgomery County, Prince George's County
 - ME – Portland

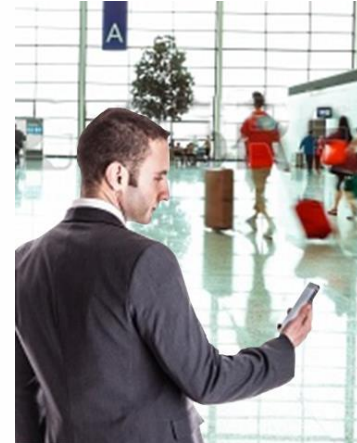
Myth #2: Federal and State Agencies Are the Only Authorities That Issue Postings

(continued)

- MN – Minneapolis, St. Paul
 - NE – Fremont, Lincoln
 - NM – Albuquerque, Bernalillo County, Las Cruces, Santa Fe
 - NY – New York City, Westchester County
 - PA – Philadelphia
 - TX – Beaumont, Corpus Christi, Dallas
 - WA – Seattle, Tacoma
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- And the list is quickly growing...

Myth #3: Posting Laws Don't Affect Remote Workers

- By law, you must provide the mandatory labor law notices to all your employees
- For employees who report to your facility (with physical wall posters) fewer than 3-4 times per month, you must provide the postings in another format
- Electronic solution is ideal for employees who work from home, telecommuters, field salespeople and other remote workers provided with Internet access
- Best practice is to use a solution that pushes out mandatory updates via email alerts and tracks employee acknowledgments



Myth #4: Posting in Foreign Languages Is Always Optional

- Certain postings must be displayed in Spanish regardless of your workforce demographics (even if all employees speak English)
 - 20 states require certain postings in Spanish for all employers
 - 46 state-issued postings must be posted in Spanish
 - City/county postings have similar requirements – in multiple languages
- All postings in Puerto Rico must be displayed in Spanish

Myth #4: Posting in Foreign Languages Is Always Optional (*continued*)

- Mandatory foreign-language postings are required in:
 - Alabama
 - Arizona
 - California
 - Connecticut
 - District of Columbia
 - Florida
 - Georgia
 - Kansas
 - Louisiana
 - Maine
 - Maryland
 - Mississippi
 - New Jersey
 - New Mexico
 - New York
 - North Carolina
 - Puerto Rico
 - South Carolina
 - Tennessee
 - Texas
 - Utah

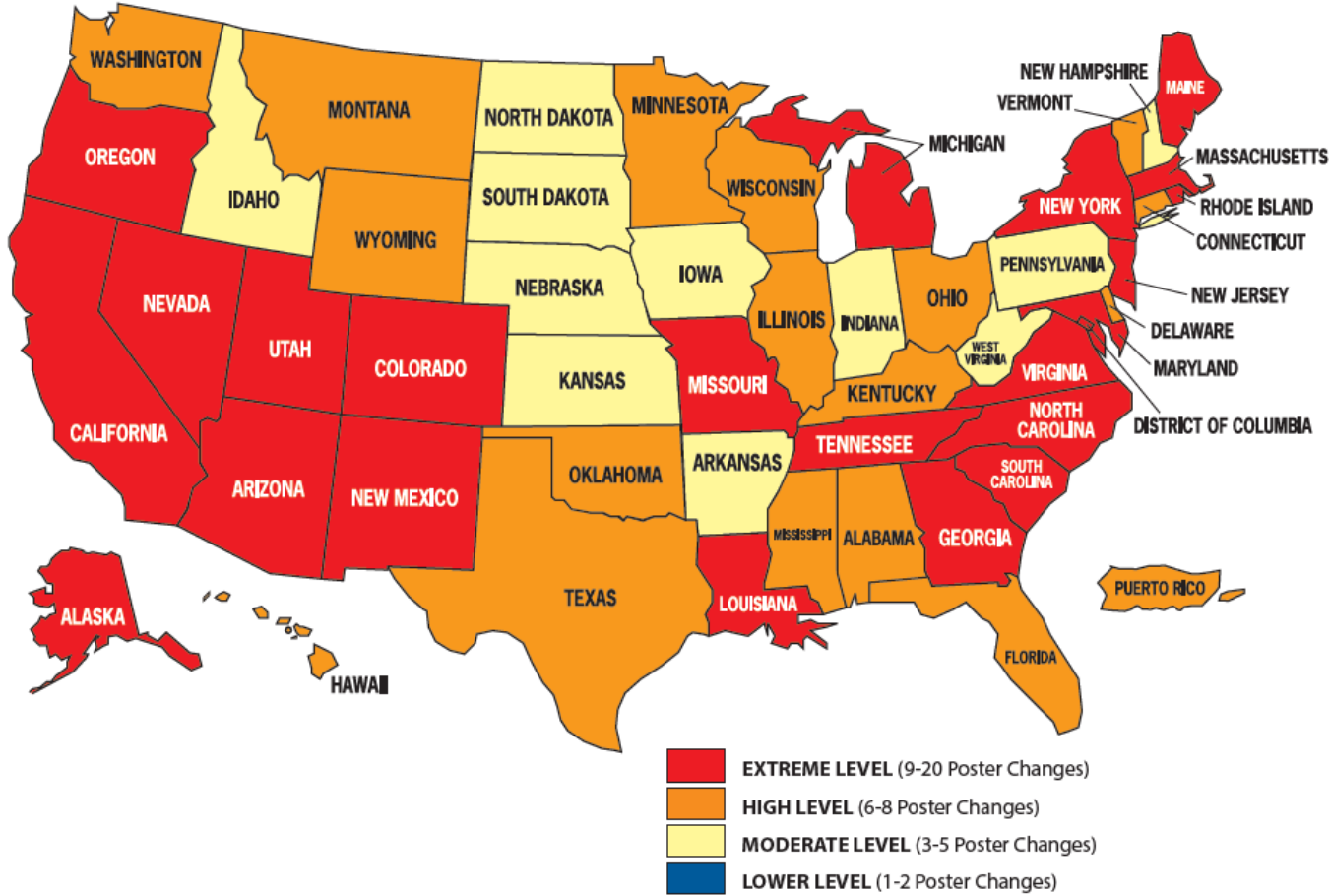
Myth #4: Posting in Foreign Languages Is Always Optional (*continued*)

- You may have *additional* obligations if you employ workers who do not speak English:
 - Federal: If you have a significant number of Spanish-speaking employees who are not proficient in English, the Federal combination poster must be posted in English and Spanish
 - State: For state postings, fully translated Spanish poster sets are a “best practice” to ensure proper communication in locations with a significant number of Spanish-speaking workers
 - Exception: Pennsylvania employers “with Spanish-speaking employees” must post fully-translated posters in Spanish

Myth #5: Posters Only Need to Be Updated Once a Year

- Poster changes happen all year long, not just in January
- Our *2019 ComplyRight Small Business Study* revealed that 29% only update annually; 26% do not update regularly
- Posting changes are on the rise
 - Typically about 75 mandatory changes per year
 - 2018 was a record year with more than 115 mandatory changes
 - 100+ mandatory changes already in 2019
- Government agencies do not notify businesses when changes occur

Mandatory Federal and State Poster Changes by State for 2015-2018



Myth #6: My Workers' Comp Provider Gives Me Everything I Need For Free

- There are 175 different agencies responsible for issuing more than 380 posters (federal and state)
- In a single state, up to 21 postings issued by 9 different agencies for federal/state compliance
- Approximately 22,000 local jurisdictions (city/county) have authority to issue their own posting requirements
- And that doesn't include additional postings required if you are in certain industries or have government contracts

Total Postings and Different Issuing Agencies by State

State	Total Federal & State Mandatory Posters	Total Number of Different Issuing Agencies (State and Federal)	State	Total Federal & State Mandatory Posters	Total Number of Different Issuing Agencies (State and Federal)
Alabama	11	5	Montana	11	5
Alaska	14	5	Nebraska	10	5
Arizona	18	9	Nevada	20	7
Arkansas	10	7	New Hampshire	15	6
California	21	7	New Jersey	21	6
Colorado	13	5	New Mexico	13	7
Connecticut	17	8	New York	18	7
Delaware	14	4	North Carolina	14	8
D.C.	17	7	North Dakota	9	6
Florida	11	8	Ohio	11	7
Georgia	15	7	Oklahoma	11	8
Hawaii	15	5	Oregon	15	8
Idaho	10	6	Pennsylvania	14	6
Illinois	14	8	Puerto Rico	11	4
Indiana	15	9	Rhode Island	17	6
Iowa	11	5	South Carolina	13	8
Kansas	11	6	South Dakota	8	4
Kentucky	13	6	Tennessee	14	7
Louisiana	20	5	Texas	10	6
Maine	14	6	Utah	13	7
Maryland	17	7	Vermont	18	4
Massachusetts	14	7	Virginia	10	5
Michigan	16	7	Washington	11	6
Minnesota	12	6	West Virginia	11	7
Mississippi	11	6	Wisconsin	16	5
Missouri	12	5	Wyoming	10	4

Effective July 2019

Myth #7: Posting Requirements Are the Same for All Types of Businesses

- Certain industries have additional employee-facing posting requirements under federal and state law
- Up to 17 additional postings per state
- Industries with the most requirements include:
 - Public Sector
 - Healthcare
 - Food Establishments



Federal Contractor Posting Requirements

- Regardless of your industry, if your business has federal government contracts you must post additional labor law notices
- In recent years, the number of businesses with government funding/contracts has grown, especially in industries such as construction, finance/banking, telecommunications, technology, transportation, and non-profit organizations
- Posting obligations depend on types of contracts you have and the value of the contracts

Federal Contractor Posting Requirements (continued)

- The most common postings required for federal contractors are:
 - Paid Sick Leave
 - Minimum Wage (Updated Jan. 2019)
 - “EEO is the Law” Supplement
 - Pay Transparency Statement
 - DOD Fraud Hotline
 - DOD Whistleblower
 - NLRA (Updated June 2019)
 - E-Verify/Right to Work (Updated March 2019)
 - Walsh-Healey Public/Service Contracts
 - ARRA Whistleblower Rights
 - DHS Fraud Hotline
 - Notice to Workers with Disabilities
 - Davis-Bacon
 - DOT Federal Highway Construction
- Federal contractor posting change frequently
- Penalties for non-compliance can be severe, including steep fines up to suspension or cancellation of federal contracts

Myth #8: We Only Need to Display One Set of Posters

- Postings must be displayed in “conspicuous locations” accessible to all employees throughout your business
- Most companies require multiple posting display sites to comply
- Specific posting locations depend on your facility size and layout
- Consider posting in breakrooms, in locker rooms, at employee entrances, in the HR department and in applicant areas

Myth #9: Posting Requirements Don't Apply to Job Applicants

- Certain federal postings must be displayed to prospective employees during the application process:
 - EEOC
 - FMLA
 - USERRA
 - EPPA
- Recommended solutions:
 - Compact vinyl adhesive poster for applicant areas
 - Full-size posting for dedicated interview/testing rooms
 - Include link to posting images for on-line applicants (not a substitute for wall posters)



Myth #10: Posters Are the Only Employee Notifications Required

- Employee handouts are legal notifications that must be personally distributed to employees, covering topics such as family and medical leave, workers' compensation, sexual harassment in the workplace and more
- Some employee handouts are event-oriented; others must be given to all employees when hired and redistributed regularly
- These requirements are separate and apart from labor law posting compliance, though many of the topics addressed are covered by both postings and handouts (the underlying employment laws may require both, or one or the other)

They Are Similar to Labor Law Posters

- Similar to labor law posters:
 - Employee handouts are mandatory legal notifications that inform employees about their rights
 - They vary by state (up to 20 per state, plus up to 14 federal)
 - Surge of local requirements
 - The government agencies add/update requirements frequently, without notifying businesses
 - They are issued by various federal, state and local agencies (there is no “one-stop shop”) – and many have to be “self-created”
 - There are significant fines, penalties and legal exposure for non-compliance

Thank you!

For more information, please contact

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