

Roundup of 2016 Labor Law Posting Changes: What Do They Mean for Your Business?

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Roundup of 2016 Labor Law Posting Changes: What Do They Mean for Your Business?

Presented by



Ashley Kaplan,
Sr. Employment Law Attorney
for Poster Guard



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About Ashley Kaplan, Esq.



- Senior Employment Law Attorney for ComplyRight, Inc.
- Also the Director of Legal Content and Labor Law Compliance, overseeing a team of attorneys and human resource professionals responsible for researching, developing and maintaining HR compliance products and Poster Guard services
- Has represented employers of all sizes in all areas of labor and employment law, including claims relating to civil rights, family leave issues, wage and hour matters, immigration and breach of contract



Learning Objectives

- Overview of top federal and state posting changes and trends for 2016
- Rapidly growing city and county posting requirements
- Additional federal contractor posting requirements
- Poster changes still pending as we enter 2017
- Posting compliance for off-site workers



General Posting Compliance



Posting Compliance Basics

- All employers must post federal, state and local (if applicable) employee postings
 - Six mandatory federal posters
 - Up to 15 additional state-specific posters
 - Up to 7 additional city/county postings
- Additional posters required for certain industries and government contractors
- Mandatory federal posters include:
 - FLSA/Minimum Wage
 - OSHA
 - EPPA
 - EEOC
 - FMLA
 - USERRA



No “One-Stop Shop” for Free Government Posters

- Nationwide, there are 178 different agencies responsible for issuing more than 370 posters (federal and state)
- In a single state, up to 21 postings issued by up to nine different agencies for federal/state compliance
- Approximately 22,000 local jurisdictions have authority to issue their own posting requirements

... and that doesn't include additional posting requirements if you're in certain industries, have government contracts, or employ non-English speaking employees



Posting Changes on the Rise

- Approximately 150 state law poster changes per year (50% require immediate mandatory replacements)
- Government agencies don't notify you when changes occur
- Posting updates and requirements (including foreign language requirements and size/font/color mandates) can be buried in statutes, regulations, case law and agency website pages



Risks of Non-Compliance

- Government posting fines
 - Federal fines recently increased to \$30,000+ per violation
 - State and local fines typically range from \$100-\$1,000 each
- Employee lawsuits
 - Failure to post can extend “statute of limitations”
 - Evidence of bad faith
 - FMLA interference of rights
- Posting compliance is your first line of defense in any lawsuit or agency investigation



2016 Federal Poster Changes

- Occupational Safety and Health Act (OSHA) poster
 - Mandatory notification requirement effective August 10, 2016 (enforcement began December 1, 2016)
- Fair Labor Standards Act (FLSA) poster
 - Mandatory poster update effective August 1, 2016
- Employee Polygraph Protection Act (EPPA) poster
 - Mandatory poster update effective August 1, 2016



2016 Federal OSHA Poster Change

- New OSHA electronic reporting rule issued May 2016
 - Employers with 250+ employees (if already required to keep injury and illness records) and with 20-249 employees (in certain high-risk industries) must submit data electronically to OSHA effective July 2017
- New rule includes mandatory employee notification requirement
 - Must inform employees that they may not be retaliated against for reporting a work-related injury or illness
 - Employers may satisfy notification requirement by posting latest OSHA poster (updated version issued on or after April 2015)
 - Effective August 10, 2016 (enforcement began 12/1/16)
 - Applies to all U.S. private employers, regardless of size or industry



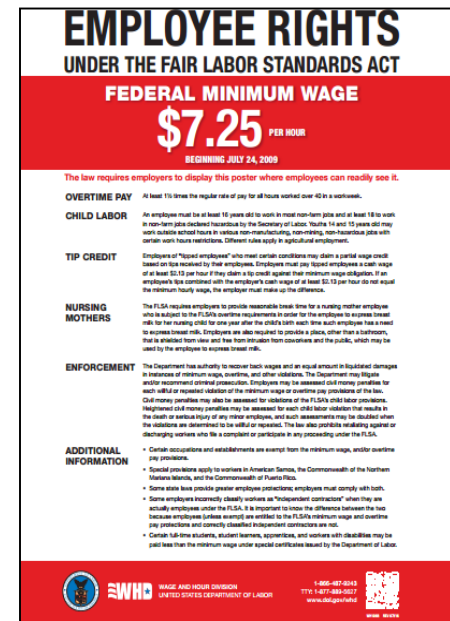
previous poster



updated poster

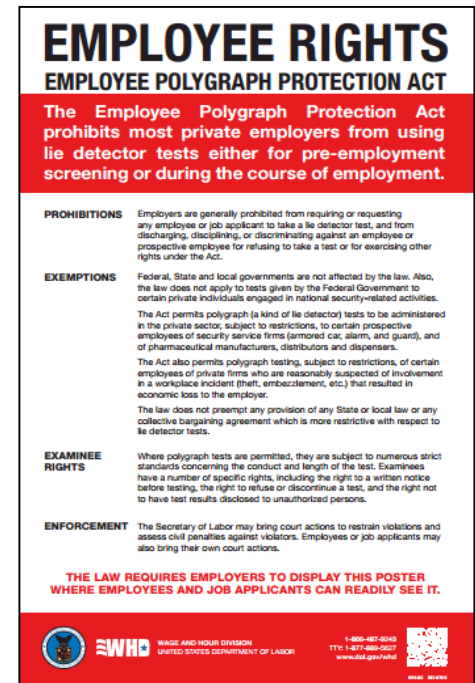
2016 Federal FLSA Poster Change

- Mandatory poster change effective August 1, 2016
- Applies to virtually all U.S. employers, regardless of employee size or industry
- Includes new information about misclassification of independent contractors
- Notifies employees of 2010 rule requiring accommodations for nursing mothers
 - Part of the Affordable Care Act; amendment to FLSA
 - Requires reasonable breaks for employees to express breast milk (for up to one year after child's birth) in a private location other than the restroom
- Incorporates penalty increase based on Civil Penalties Inflation Adjustment Act



2016 Federal EPPA Poster Change

- Mandatory change effective August 1, 2016
- Applies to virtually all private U.S. employers, regardless of employee size or industry (even if you do not conduct lie detector tests)
- Poster change reflects increased penalties under Civil Penalties Inflation Adjustment Act
- Specific penalties removed to allow for ongoing increases based on consumer price index

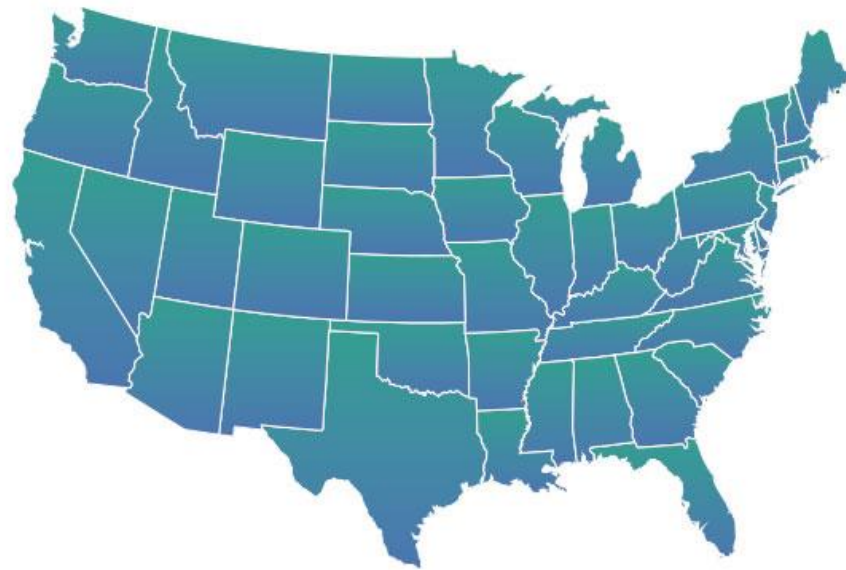


Pending Federal Poster Changes

- Host of proposed legislation and pending federal regulatory activity that could impact labor law posters in 2017
- New administration may lead to reduced federal regulatory activity; increased legislation expected at state/local levels
- “EEO Is the Law” posting still expected to change
 - Mandatory update expected based on 4/8/15 law prohibiting discrimination based on sexual orientation and gender identity, and 3/24/14 law expanding veteran protections
 - Not yet known whether new poster will be required for all employers or only federal contractors to replace temporary supplement issued in 2015



State Labor Law Compliance



State-Issued Labor Law Posters

- Up to 15 state-issued postings required per state, covering issues such as:
 - Workers' Compensation
 - Unemployment Insurance
 - State Minimum Wage
 - Fair Employment
 - Family/Medical Leave Benefits
 - Smoking in the Workplace
- Employers must post both federal and state postings even if there's conflicting information

The image displays a collection of official Alabama labor law posters. The top-left poster is the 'COMPLYRIGHT Alabama State Labor Law Postings' notice. To its right is the 'EMERGENCY' poster, which provides contact information for ambulance, fire, rescue, hospital, physician, alternate, police, and CPR contacts. Further right is the 'Workers' Compensation' poster, detailing the process for reporting an injury and the employer's obligations. The bottom row features three more posters: 'ALABAMA CHILD LABOR LAWS' which outlines restrictions on child employment; 'YOUR JOB INSURANCE' which informs workers of their rights under the Alabama Unemployment Compensation Law; and 'Unemployment Insurance' which details the benefits and requirements for unemployment insurance.

Total Postings and Different Issuing Agencies by State

State	Total Federal & State Mandatory Posters	Total Number of Different Issuing Agencies (State and Federal)
Alabama	11	5
Alaska	12	5
Arizona	17	9
Arkansas	10	7
California	21	7
Colorado	13	5
Connecticut	16	8
Delaware	14	4
D.C.	17	7
Florida	11	8
Georgia	15	7
Hawaii	16	5
Idaho	10	6
Illinois	12	8
Indiana	15	9
Iowa	11	5
Kansas	11	6
Kentucky	13	6
Louisiana	20	5
Maine	14	6
Maryland	16	7
Massachusetts	13	7
Michigan	15	7
Minnesota	12	6
Mississippi	11	6
Missouri	12	5

State	Total Federal & State Mandatory Posters	Total Number of Different Issuing Agencies (State and Federal)
Montana	11	5
Nebraska	10	5
Nevada	16	7
New Hampshire	15	6
New Jersey	20	6
New Mexico	13	7
New York	17	7
North Carolina	14	8
North Dakota	9	6
Ohio	11	7
Oklahoma	11	8
Oregon	14	8
Pennsylvania	14	6
Puerto Rico	9	4
Rhode Island	15	6
South Carolina	13	8
South Dakota	9	4
Tennessee	14	7
Texas	10	7
Utah	13	7
Vermont	15	4
Virginia	10	5
Washington	11	6
West Virginia	11	7
Wisconsin	16	5
Wyoming	10	4

2016 State Poster Changes: Minimum Wage

State	New Minimum Wage	Effective Date
Colorado	\$8.31	January 1, 2016
Michigan	\$8.50	January 1, 2016
Minnesota	\$9.50	August 1, 2016
New York	\$9.00	December 31, 2015
Oregon	\$9.75	July 1, 2016
Rhode Island	\$9.60	January 1, 2016

- Other states had MW increases, but previous versions of posters remained compliant
- South Dakota also had an increase but didn't require a minimum wage posting



State Minimum Wage Increases for 2017: New Posters Released

The following states announced minimum wage increases and have already issued new posters:

State	New Minimum Wage	Effective Date
Alaska	\$9.80	January 1, 2017
Arkansas	\$8.50	January 1, 2017
California	\$10.50 (for employers who employ 26 or more employees)	January 1, 2017
Colorado	\$9.30	January 1, 2017
Connecticut	\$10.10	January 1, 2017
District of Columbia	\$12.50	July 1, 2017
Florida	\$8.10	January 1, 2017
Hawaii	\$9.25	January 1, 2017
Maryland	\$9.25	July 1, 2017
Massachusetts	\$11.00	January 1, 2017
Michigan	\$8.90	January 1, 2017
Missouri	\$7.70	January 1, 2017
Montana	\$8.15	January 1, 2017
New Jersey	\$8.44	January 1, 2017
Ohio	\$8.15	January 1, 2017
Vermont	\$10.00	January 1, 2017

State Minimum Wage Increases for 2017: Posters Not Yet Released

These states announced minimum wage increases, but the new posters haven't been released yet:

State	New Minimum Wage	Effective Date
Arizona	\$10.00	January 1, 2017
Maine	\$9.00	January 1, 2017
New York	Variable rates based on location	December 31, 2016
Oregon	\$10.25	July 1, 2017
South Dakota	\$8.65	January 1, 2017*
Washington	\$11.00	January 1, 2017*

**Note: There are currently no minimum wage posting requirements for South Dakota or Washington*



2016 State Poster Changes: OSHA State Law

- The following states updated their state OSHA posters in 2016 to incorporate the new federal OSHA rule requiring employers to inform employees of their right to report work-related injuries and illnesses free from retaliation:

- North Carolina OSHA poster - Mandatory update 8/2016
- Oregon OSHA poster - Mandatory update 10/2016
- Virginia OSHA poster - Mandatory update 10/2016
- Wyoming OSHA poster - Mandatory update 9/2016

Wage and Hour Notice to Employees and OSH Notice to Employees must be posted together.

OSH Notice to Employees

Safety and Health (OSHA)
U.S. Department of Labor

Employer Rights and Responsibilities
Firms and private sector employers have a "general duty" to provide their employees with workplaces that are free of any identified hazards that are known or should be known to exist. This duty is reinforced by the Occupational Safety and Health Act (OSHA) and the Federal Occupational Safety and Health Act (OSHA) and the Federal Occupational Safety and Health Act (OSHA).

Additional Information or Questions: Please bring a specific question or the above information was not a right.

Other OSHA Information
• **Federal Mandate:** The OSHA Division is mandated by the U.S. Department of Labor to ensure that employers are aware of their responsibilities under the OSHA Act. The OSHA Division is the Federal Occupational Safety and Health Act (OSHA) and the Federal Occupational Safety and Health Act (OSHA).

Additional Information or Questions: Please bring a specific question or the above information was not a right.

U.S. Department of Labor
Occupational Safety and Health Division
101 Main Street, Suite 100
Pittsburgh, PA 15222-1001
Phone: (412) 778-2728
Fax: (412) 778-2729
Email: osha-nc@hhs.gov
www.osha-slc.com

Employee Rights and Responsibilities
Firms and private sector employers must comply with OSHA standards only and health standards, rules, regulations, and standards issued under OSHA that relate to their own safety and health.

Compliance: An employer has a right to make a complaint regarding workplace conditions to or the OSHA or state, authority or a violation of OSHA standards. When an OSHA employee is an employer's employee, the employer has a right to make a complaint or a violation of OSHA standards. The employer must provide the employee with the information necessary to make a complaint. The employer must provide the employee with the information necessary to make a complaint.

It is a violation of OSHA standards to:
• Retaliate against an employee for filing a complaint or for exercising his or her rights under OSHA standards.
• Discriminate against an employee for filing a complaint or for exercising his or her rights under OSHA standards.
• Discourage an employee from filing a complaint or for exercising his or her rights under OSHA standards.
• Discourage an employee from filing a complaint or for exercising his or her rights under OSHA standards.

Employers who violate OSHA standards may be fined or imprisoned, or both. Employees who violate OSHA standards may be fined or imprisoned, or both.

For more information, please contact:
U.S. Department of Labor
Occupational Safety and Health Division
101 Main Street, Suite 100
Pittsburgh, PA 15222-1001
Phone: (412) 778-2728
Fax: (412) 778-2729
Email: osha-nc@hhs.gov
www.osha-slc.com

**1-800-NC-LABOR
(1-800-625-2267)
www.ncslabor.com**

This notice must be posted prominently. This poster is available free of charge to all North Carolina workplaces. Call 1-800-625-2267 or 919-487-2873 or order online.

OSHA Workers' Compensation Notice to Injured Workers and Employers (Form 7)
OSHA does not have authority to enforce workers' compensation. If you would like information about workers' compensation, please contact your state's workers' compensation agency. For more information, please contact your state's workers' compensation agency. For more information, please contact your state's workers' compensation agency.

2016 State Poster Changes: Pregnancy Discrimination

- Several states passed laws in 2016 targeting pregnancy discrimination and clarifying employer responsibilities to provide reasonable accommodations:
 - Colorado - New poster issued August 2016
 - Utah - New poster issued September 2016
 - West Virginia - Updated poster issued May 2016



City and County Poster Changes



City and County Posting Compliance

- Cities have the discretion to pass laws more generous to employees than state or federal law
- Postings cover a variety of employment laws similar to state posters, such as:
 - Minimum wage
 - Paid sick leave
 - Prohibitions against discrimination
- Employers must post city/county postings even if the city/county posting conflicts with state or federal law



2016 City/County Poster Changes

State	City	Poster
California	Berkeley	Minimum Wage
	El Cerrito	
	Los Angeles County	
	Pasadena	
	San Francisco	
	Santa Monica	
	Sunnyvale	
	Emeryville	Minimum Wage and Paid Sick
	Los Angeles	
	San Diego	
Maryland	Montgomery County	Paid Sick
New Jersey	Elizabeth	Paid Sick
	Irvington	
	Jersey City	
	Newark	
	New Brunswick	
	Plainfield	
New Mexico	Santa Fe	Minimum Wage
Pennsylvania	Philadelphia	Wage Theft and Fair Chance

Local Postings Already Released for 2017

State	City	Poster	Effective Date
California	El Cerrito	Minimum Wage	January 1, 2017
	Los Altos	Minimum Wage	January 1, 2017
	Mountain View	Minimum Wage	January 1, 2017
	Oakland	Minimum Wage	January 1, 2017
	Palo Alto	Minimum Wage	January 1, 2017
	Richmond	Minimum Wage	January 1, 2017
	San Jose	Minimum Wage	January 1, 2017
	San Mateo	Minimum Wage	January 1, 2017
	Santa Clara	Minimum Wage	January 1, 2017
	Santa Monica	Paid Sick Leave	January 1, 2017
	Sunnyvale	Minimum Wage	January 1, 2017
New Mexico	Albuquerque	Minimum Wage	January 1, 2017
New Mexico	Las Cruces	Minimum Wage	January 1, 2017
Washington	Spokane	Paid Sick Leave	January 1, 2017
Washington	Seattle	Minimum Wage	January 1, 2017
Washington	Tacoma	Minimum Wage	January 1, 2017

Pending City/County Poster Changes

Pending poster changes (not yet released) based on laws already enacted:

State	City	Poster	Effective Date
California	Berkeley	Paid Sick Leave	October 1, 2017
	Pasadena	Minimum Wage	July 1, 2017
	San Diego	Minimum Wage	January 1, 2017
	San Francisco	Minimum Wage	July 1, 2017
Illinois	Chicago	Paid Sick Leave	July 1, 2017
	Cook County	Minimum Wage and Paid Sick Leave	July 1, 2017
Maine	Bangor	Minimum Wage	January 1, 2017
Minnesota	Minneapolis	Paid Sick Leave	July 1, 2017
	St. Paul	Paid Sick Leave	July 1, 2017
New Jersey	Morristown	Paid Sick Leave	January 11, 2017



Federal Contractor Compliance



COMPLYRIGHT.

Federal Contractors Have Additional Posting Obligations

- Federal contractor posting obligations depend on the types of contracts you have and, in some cases, the value of the contracts
- To determine if you're a federal contractor for posting purposes, ask yourself:
 1. Does our business provide goods or services to the federal government or receive federal funding?
 2. Has our business received federal funds under the American Recovery and Reinvestment Act of 2009?
 3. Does our business work on federally financed construction projects?
 4. Is our business required to use E-Verify?



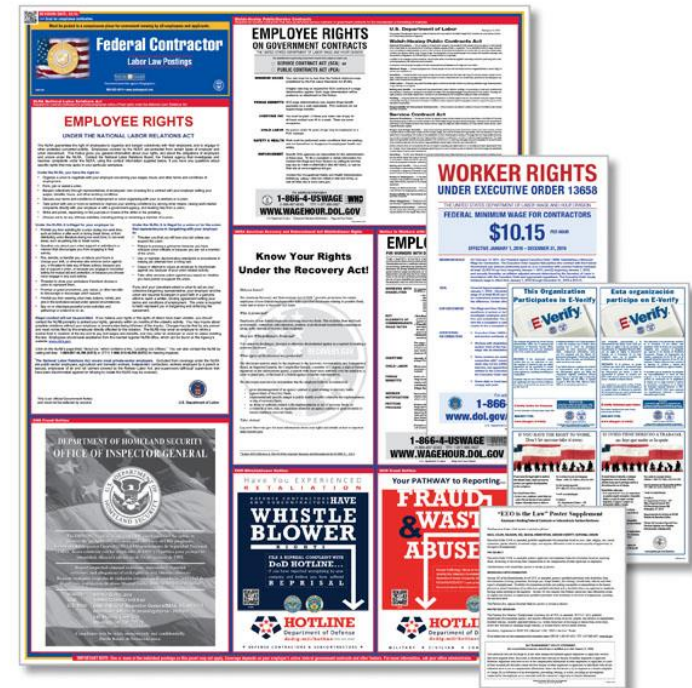
Federal Contractor Postings

- The most common postings required for federal contractors are:
 1. Paid Sick Leave (New! Jan. 2017)
 2. Minimum Wage (Updated! Jan. 2017)
 3. “EEO is the Law” Supplement (New! Jan. 2016)
 4. Pay Transparency Policy (New! Jan. 2016)
 5. NLRA (required by EO 13496)
 6. E-Verify/Right to Work
 7. Walsh-Healey Public/Service Contracts
 8. ARRA Whistleblower Rights
 9. DHS Fraud Hotline
 10. Notice to Workers with Disabilities
 11. Davis-Bacon Act
 12. DOT Federal Highway Construction
 13. DOD Whistleblower
 14. DOD Fraud Hotline



Federal Contractor Postings (cont.)

- Federal contractor postings change frequently
 - Eight mandatory changes since 2015
 - Two already announced for January 2017
 - More posting changes pending for 2017
- Penalties for non-compliance can be severe, including steep fines up to suspension or cancellation of federal contracts

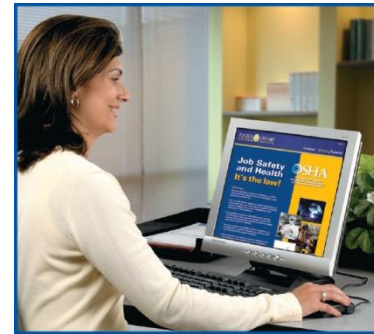


Compliance for Off-Site Workers



Remote Workers & Telecommuters

- By law, you must provide the mandatory federal and state notices to all 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



Non-Traditional Worksites

- Many of today's worksites lack adequate wall space for posting all the required federal, state and local postings
- Examples are mall kiosks, mobile service units, food trucks, valet stations, construction checkpoints, and other facilities without walls
- If electronic access is not provided, consider an alternative format such as a compact binder



Questions?

