

# MIND THE GAPS:

---

## Labor Law Compliance Requirements Employers Often Overlook

November 2021

Presented by:

Jaime Lizotte, Tax & Compliance Solutions Manager



# LABOR LAW POSTING COMPLIANCE OVERVIEW

# Federal Posting Requirements

- All employers must post certain federal postings
- Mandatory federal posters include:
  - Equal Employment Opportunity Commission (EEOC)
  - Occupational Safety and Health Administration (OSHA)
  - Family and Medical Leave Act (FMLA)
  - Uniformed Services Employment & Reemployment Rights Act (USERRA)
  - Fair Labor Standards Act (FLSA)
  - Employee Polygraph Protection Act (EPPA)

# State Posting Requirements

- Every state makes its own laws, and no two states have the same posting requirements
- Up to 16 state postings may be required, depending on the state
- There is no “one-stop shop” for free government posters
- There are 175 federal/state agencies responsible for issuing more than 400 posters (up to nine different agencies per state)

## 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	14	5
Arizona	18	9
Arkansas	10	7
California	21	7
Colorado	13	5
Connecticut	17	8
Delaware	14	4
D.C.	20	7
Florida	11	8
Georgia	15	7
Hawaii	15	5
Idaho	10	6
Illinois	15	8
Indiana	15	9
Iowa	11	5
Kansas	11	6
Kentucky	13	6
Louisiana	20	5
Maine	14	6
Maryland	17	7
Massachusetts	15	7
Michigan	16	7
Minnesota	12	6
Mississippi	11	6
Missouri	13	5

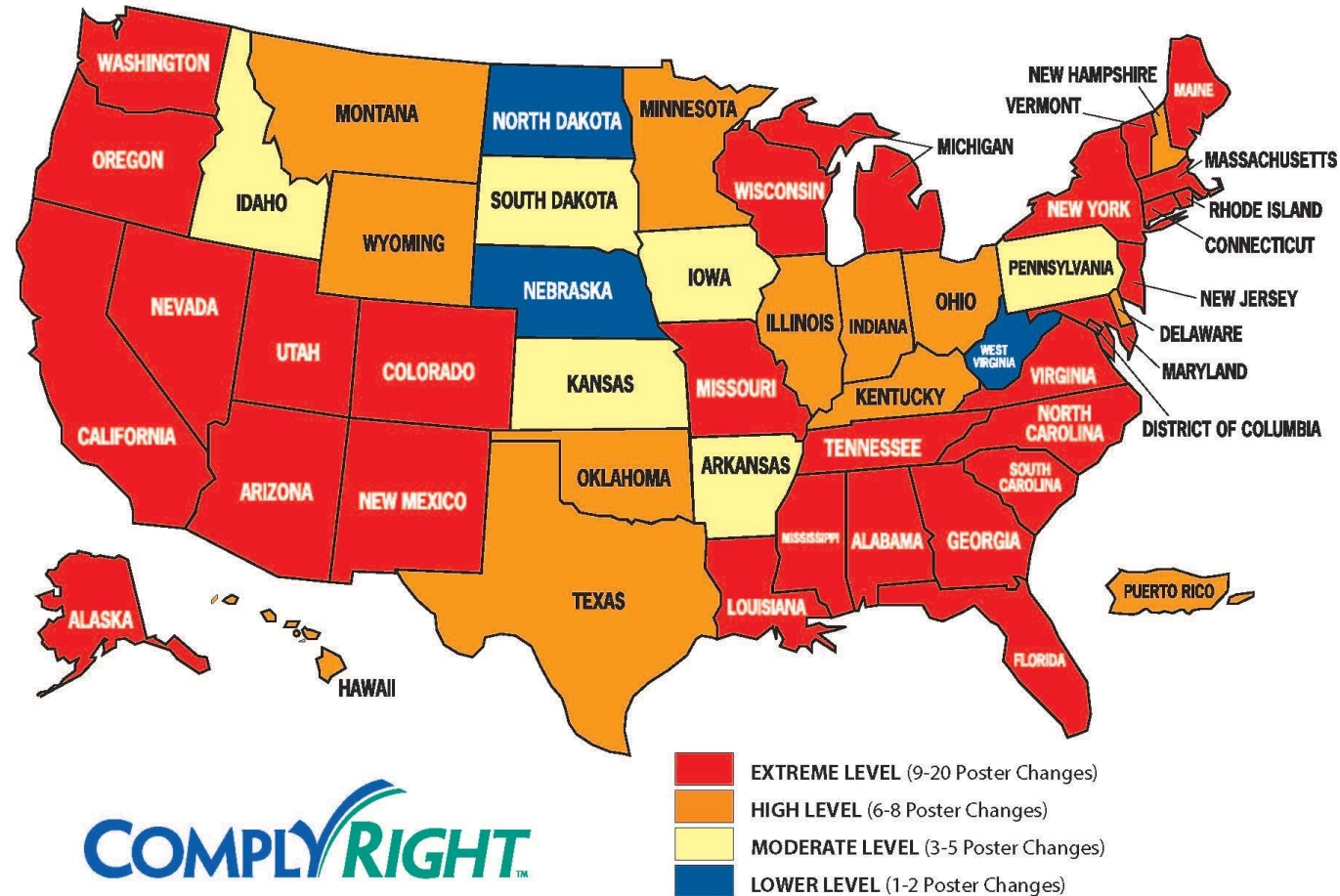
State	Total Federal & State Mandatory Posters	Total Number of Different Issuing Agencies (State and Federal)
Montana	11	5
Nebraska	10	5
Nevada	25	7
New Hampshire	15	6
New Jersey	23	6
New Mexico	13	7
New York	20	7
North Carolina	14	8
North Dakota	10	6
Ohio	11	7
Oklahoma	12	8
Oregon	18	8
Pennsylvania	14	6
Puerto Rico	12	4
Rhode Island	17	6
South Carolina	13	8
South Dakota	8	4
Tennessee	14	7
Texas	10	6
Utah	13	7
Vermont	18	4
Virginia	14	5
Washington	13	6
West Virginia	11	7
Wisconsin	16	5
Wyoming	10	4

Effective October 2021

# Mandatory Posting Changes

- Approximately 150 state-specific poster changes occur each year (50% require immediate mandatory replacements)
- The number of changes has increased significantly over the past two years
- Government agencies do not notify you when changes occur
- Posting requirements (including size, font and color mandates, as well as foreign language requirements) and change notifications may be buried in statutes, regulations, case law and agency website pages

## Mandatory Federal and State Poster Changes by State for 2017-2020



# Risks of Noncompliance

- Government posting fines
  - Federal fines recently increased from \$17,000 to \$36,000+
  - State and local fines typically range from \$100-\$1,000
- Employee lawsuits
  - Failure to post can extend “statute of limitations”
  - Evidence of bad faith
- Posting compliance is your first line of defense in any lawsuit or agency investigation



# LOCAL POSTING REQUIREMENTS

# Mandatory City/Local Postings

Additional posters are required in certain cities and counties.  
For example:

- TX – Beaumont, Corpus Christi
- FL – Broward County, Miami Beach, Pinellas County
- IL– Chicago, Cook County
- PA – Philadelphia, Pittsburgh
- MN – Duluth, Minneapolis, St. Paul
- NY – New York City, Westchester County
- WA — Seattle, Tacoma

# Mandatory City/Local Postings

- Posting changes are on the rise
- Typically, about 50 mandatory changes occur each year
- However, there were 85 changes in 2019, 110 changes in 2020, and more than 120 expected for 2021
- Like federal and state postings, local government agencies do not notify employers when changes occur
- Posting requirements and updates can be buried in statutes, regulations, case law and agency website pages

# FOREIGN LANGUAGE POSTING REQUIREMENTS

# Foreign Language Requirements

- Certain postings must be displayed in Spanish regardless of languages spoken by employees
- Many states require certain Spanish postings for all employers
  - Alabama, Arizona, California, Connecticut, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Mississippi, New Jersey, New Mexico, New York, North Carolina, Puerto Rico, South Carolina, Tennessee, Texas, Utah and the District of Columbia
- A few states go beyond a Spanish posting requirement and have requirements for other languages
- Multiple local jurisdictions across the country also have foreign-language posting requirements

# Foreign Language Requirements

- Businesses may have additional obligations if they employ workers who do not speak English
- If you have a significant number of Spanish-speaking employees who are not proficient in English, the federal FMLA poster must be posted in English and Spanish
- Some state and local posters must be displayed in foreign languages in locations with a certain number of affected employees

# POSTING REQUIREMENTS FOR REMOTE WORKERS

# Remote Worker Requirements

- Businesses must provide mandatory federal, state and local labor law notices to all employees – including offsite workers
- If a business has employees who report to a physical facility less than 3-4 times a month, posters must be provided in another format, such as electronically
- An electronic solution is ideal for employees who work from home, field salespeople and other remote workers
- It's best to use a solution that pushes out mandatory updates via email alerts and tracks employee acknowledgments



# Remote Worker Requirements

- If you have offsite workers who do not work on computers, there are other alternatives such as a compact binder format
- Many employers choose this format for non-traditional worksites that have no walls (e.g., mall kiosk or food truck)
- If there are no walls, these binders are compliant – otherwise they are not a replacement for the regular wall posters

# POSTING REQUIREMENTS FOR JOB APPLICANTS

# Job Applicant Requirements

Of the six federally mandated labor law posters employers are required to display, four must be visible to job applicants:

- Family and Medical Leave Act (FMLA)
- Equal Employment Opportunity Commission (EEOC)
- Employee Polygraph Protection Act (EPPA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA) ... it's a best practice to include because the law protects applicants and employees

# MANDATORY EMPLOYEE HANDOUTS/NOTIFICATIONS

# Employee Handout Overview

- Employee handouts are legal notifications that must be personally distributed to employees
- They cover topics such as paid sick leave, family and medical leave, wage theft, workers' compensation, unemployment insurance, sexual harassment in the workplace and more
- These requirements are separate from labor law posting compliance, though many of the topics are covered by both postings and handouts

# Employee Handout Distribution

- Notices may be required for events such as:
  - ✓ Hiring
  - ✓ Request for legally protected time off
  - ✓ Pregnancy
  - ✓ Workplace injury
  - ✓ Separation
  - ✓ Change in pay
- Some are required whenever an employee requests the information
- Many handouts must be given to all employees at the time of hire, and redistributed on a regular basis

# Similarities to Labor Law Postings

- These handouts are mandatory legal notifications that inform employees about their rights
- Every state has different legal requirements
- The number of city and county requirements is increasing
- They change frequently and employers are not notified of changes
- Handouts are issued by different agencies so there's no one-stop shop where businesses can get everything they need
- Handout laws carry significant penalties for noncompliance

# SOLUTIONS TO PROTECT YOUR BUSINESS



# Mandatory Employee Handout Service

- This annual service gives you 24/7 digital access to all the handouts required for federal, state, city and county compliance
- Handouts may be printed, sent electronically, or uploaded to your HRIS or intranet site
- Attorney-written instructions are included detailing exactly when and how each handout should be distributed

# Poster Guard Compliance Protection

- This subscription service gets your business in immediate compliance with all federal, state, city and county posting requirements
- Whenever a mandatory change occurs, replacement posters are automatically shipped at no cost
- If Spanish postings or other foreign language postings are required for all employees, those are included at no charge
- 100% guarantee against fines

# Additional Solutions Available

- E-Service for Remote Workers
- Intranet Licensing Service
- Applicant Posting Services
- Binder Service for Small Workspaces

# THANK YOU!