



DOL issues guidance on electronic posting of labor law notices

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In response to the increased use of remote working, the Department of Labor's (DOL's) Wage and Hour Division (WHD) issued guidance ([Field Assistance Bulletin 2020-7](#)) on when electronic posting by employers — via email or an internet or intranet website — will satisfy the notice requirements for employees and applicants of their rights under the federal Fair Labor Standards Act, the Family and Medical Leave Act, the Employee Polygraph Protection Act, and the Service Contract Act. In most cases, the electronic notices supplement, but do not replace, the requirements to post a hard copy notice. The guidance responds to the DOL's "ongoing commitment to provide the workforce critical information about flexibilities that allow employers and employees to better navigate the uncharted waters brought on by the coronavirus' effects on the workplace." Separately, the WHD issued other guidance supporting workplace flexibility through virtual communication: [Field Assistance Bulletin 2020-8](#) addresses the criteria necessary for a telemedicine visit to be considered an "in-person" visit for the purpose of establishing a serious health condition under the FMLA.

Highlights

Continuous posting. If laws and the applicable regulations require a notice to be continuously posted at a worksite, the WHD, in most cases, will only consider electronic posting to be an acceptable substitute if all employees:

- Exclusively work remotely
- Customarily receive information from the employer via electronic means
- Have readily available access to the electronic posting at all times

Where an employer has both on-site and teleworking employees, DOL encourages both methods of posting.

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Individual notices. If laws and applicable regulations permit delivery of notices to individual employees, electronic delivery could fulfill notice requirements only if the employee customarily receives information electronically from the employer. This criteria is consistent with WHD's existing regulations.

Access. Electronic notices must be as effective as a hard copy posting. Determining whether affected individuals can readily see an electronic notice depends on the facts. For instance, the affected individuals must have the ability to access and view the notice without having to request permission to view a file or access a computer. WHD gives several examples of when an electronic notice is insufficient:

- The employer does not customarily post notices electronically.
- The employer has not taken steps to inform employees of where and how to access the notice electronically.
- The posting is on an unknown or little known electronic location.
- Affected individuals cannot easily determine which electronic posting is applicable to them and their worksite.

Specific laws and regulations. The guidance covers the posting requirements for the above-mentioned laws and regulations and specifically explains how electronic notices will comply.

Related resources

- [DOL issues guidance supporting workplace flexibilities through virtual communication](#) (WHD, 29 Dec 2020)
- [Field Assistance Bulletin No. 2020-7](#) (WHD, 29 Dec 2020)
- [Field Assistance Bulletin No. 2020-8](#) (WHD, 29 Dec 2020)

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