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# DOL Issues Guidance on Electronic Posting of Labor Law Notices

## Background

On December 29, 2020, the US Department of Labor (DOL) issued [Field Assistance Bulletin 2020-7](#), which addresses when electronic posting by employers (via email or an internet or intranet website) is sufficient to provide employees with required notice of their statutory rights under a variety of federal labor laws. The Bulletin was issued in response to employer questions about the use of electronic means to post notices under the following laws, as more employees work remotely due to the COVID-19 pandemic:

- The Fair Labor Standards Act (FLSA);
- The Family and Medical Leave Act (FMLA);
- The Employee Polygraph Protection Act (EPPA); and
- The Service Contract Act (SCA).

## Summary

This e-Alert summarizes the current statutory and regulatory posting requirements and explains how electronic means of satisfying these requirements can be achieved per the DOL guidance.

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## **Continuous Posting**

The Bulletin outlines when electronic posting is an acceptable substitute for the continuous posting requirement contained in several statutes (i.e., requiring employers to “post and keep posted” or requiring the posting of a notice “at all times”).

## **Individual Notices**

Where delivery of notices to individual employees is permitted, email delivery (or another similar method of electronic delivery) is sufficient only if the employee customarily receives information from the employer electronically.

## **Access**

Affected individuals must be able to readily see a copy of the required postings in electronic format, which will depend on the facts. For example, the affected individual must be capable of accessing the posting without having to specifically request permission to view a file or access a computer. The employer must take steps to inform employees of where and how to access the notice electronically.

## **Federal Labor Law Posting Requirements**

The following provides an overview of the current posting requirements of the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Employee Polygraph Protection Act (EPPA), and the Service Contract Act (SCA), and how these requirements can be satisfied through electronic means.

### **FLSA: Provisions for minimum wage, overtime, break time for nursing mothers**

- An employer with any employees subject to these provisions is required to post and keep posted a notice explaining the FLSA in conspicuous places in every establishment where such workers are employed.
- Electronic posting (e.g., on an employee information internal or external website, or shared network drive or file system) will be sufficient to meet the statutory posting requirement if all employees:
  - Exclusively work remotely;
  - Customarily receive information from the employer via electronic means; and
  - Have readily available access to the electronic posting at all times.

### **FMLA**

- Each covered employer must post and keep posted, in conspicuous places on the premises where workers are employed, a general notice explaining the FMLA's provisions (among other things). Electronic posting of the general FMLA notice is permitted, as long as it otherwise meets these requirements.

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- Electronic posting is permitted where all hiring and work is done remotely and an employer posts the appropriate notice on an internal or external website that is accessible to all employees and applicants.
- The notice must be posted prominently where it can be readily seen by employees and applicants.

Employers can read about additional notices in the field bulletin.

## Employer Next Steps

- It is important to note this e-Alert reflects Federal guidance and states have specific requirements for state mandated notices.
- In most cases, electronic notices supplement, but do not replace, the statutory and regulatory requirements that employers post a hard-copy notice. For example, the DOL encourages both methods of posting where an employer has employees on-site and other employees teleworking full-time.
- According to the DOL, **whether notices are provided electronically or in hard-copy format, it is an employer's obligation to provide the required notices to all affected individuals.**

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