

United States Department of Labor Issues Guidance Regarding Posting Requirements

In light of the increased number of employees who are working from home, the United States Department of Labor (the “DOL”) has issued updated guidance regarding posting requirements. Though the guidance issued by the DOL specifically addresses posting requirements under the: (i) Fair Labor Standards Act (the “FLSA”); (ii) Family and Medical Leave Act (the “FMLA”); (iii) Employee Polygraph Protection Act (the “EPPA”); and (iv) Public Contracts Act and Service Contract Act, employers are wise to consider such guidance when complying with other posting mandates.

Fair Labor Standards Act

The FLSA requires employers to post a FLSA poster developed by the DOL in a conspicuous place where all employees can see it. This poster identifies the federal minimum wage, as well as, overtime, child labor, tip credit, and nursing mother requirements. According to the DOL, electronic posting of the FLSA poster will only satisfy the posting requirement if: “(1) all of the employer’s employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times.”

The DOL also requires a similar posting requirement for all employers “of workers with disabilities under special minimum wage certificates authorized by the Fair Labor Standards Act, the McNamara-O’Hara Service Contract Act, and/or the Walsh-Healey Public Contracts Act.” The DOL requires that its Employee Rights For Workers With Disabilities Paid At Subminimum Wages poster be posted “in a conspicuous place on the employer’s premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers.” If an employer, however, finds the posting of this notice to be inappropriate, the DOL permits an employer to instead provide “the poster directly to all employees subject to its terms.” As such, the DOL has confirmed that “if an employer finds it inappropriate to post a physical notice to employees, an employer may satisfy the...posting requirements [of this form]...by emailing or direct mailing the poster to workers employed under 14(c) subminimum wage certificates or, where appropriate, the parents and/or guardians of such employees.”

Family and Medical Leave Act

The FMLA requires all covered employers (those with 50 or more employees during at least 20 workweeks during the current or prior year) to display a related DOL poster that addresses FMLA leave entitlements, benefits & protections, eligibility requirements, leave requests, employer responsibilities, and enforcement. The DOL confirms that that such poster “must be displayed in a conspicuous place where employees and applicants for employment can see it.” According to the DOL, this posting requirement will be satisfied by electronic posting where: “all hiring and work is done remotely and an employer posts the appropriate FMLA notice on an internal or external website that is accessible to all employees and applicants.”

Employee Polygraph Protection Act

Pursuant to 29 CFR § 801.6, notice pursuant to the EPPA “must be posted in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment.” According to the DOL, however, “electronic posting may be sufficient to meet this posting requirement if, as discussed above, (1) all employees exclusively work remotely and the hiring process for applicants occurs remotely, (2) all employees and applicants customarily receive

information from the employer via electronic means, and (3) all employees or applicants have readily available access to the electronic posting at all times.”

Public Contracts Act and Service Contract Act

Lastly, the DOL confirms that “[e]very employer performing work covered by the Walsh-Healey Public Contracts Act or the McNamara-O’Hara Service Contract Act (SCA) is required to post a notice of the compensation required (including, for service contracts, any applicable wage determination) in a prominent and accessible location at the worksite where it may be seen by all employees performing on the contract.” According to the DOL, this worksite posting requirement would be satisfied by an electronic posting if “(1) all of the employer’s employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times.”

The experienced labor and employment attorneys at Kaufman Dolowich and Voluck are prepared to help employers comply with the DOL’s guidance and with any other employment posting-related questions you may have. If you have any questions, or wish to discuss the contents of this alert further, please contact Keith J. Gutstein or Matthew Cohen by email at KGutstein@kaufmandolowich.com, MCohen@kaufmandolowich.com, or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck’s Labor & Employment Law Practice Group.