



DOL Field Assistance Bulletin for FMLA Electronic Notices

The Department of Labor ("DOL") has issued Field Assistance Bulletin ("FAB") 2020-7 to provide guidance on when, as a matter of enforcement policy, it will consider the electronic posting of the General FMLA Notice to be in compliance with the law.

FMLA Notice

Employers covered under the Family and Medical Leave Act ("FMLA") must post a copy of the General FMLA Notice in each location where they have employees. The General FMLA Notice is intended to provide an explanation of the law's protections and requirements, as well as how employees can file complaints of violations of FMLA with DOL.

The General FMLA Notice must be prominently and continuously displayed where it can be easily seen by employees and job applicants.

Employers may electronically post the General FMLA Notice as long as they satisfy DOL's electronic posting requirements. Where a significant portion of the employer's workforce is not literate in English, the employer must provide the General FMLA Notice in a language in which the employees are literate. Employers who violate the General FMLA Notice requirements can be liable for a civil penalty.

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The FAB notes that if a law requires a notice to be continuously posted at a worksite, in most cases DOL will only consider electronic posting to be an acceptable substitute for the continuous posting requirement where: "(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." When an employer has employees on-site and other employees teleworking full-time, the employer may supplement a hard-copy posting with an electronic posting.

The FAB also states that:

- If an employer seeks to meet the worksite posting requirement through electronic means, such as on an intranet site, internet website, or shared network drive or file system posting, the electronic notice must be "as effective as a hard-copy posting."
- DOL will not consider electronic posting on a website or intranet to be an effective means of providing notice if an employer does not customarily post notices to affected employees or other affected individuals electronically.

- If the employer has not taken steps to inform employees of where and how to access the notice electronically, DOL will not consider the employer to have complied with the posting requirement.
- Posting on an unknown or little-known electronic location has the effect of hiding the notice, similar to posting a hard-copy notice in an inconspicuous place, “such as a custodial closet or little-visited basement.” Moreover, if the affected individuals cannot easily determine which electronic posting is applicable to them and their worksite, DOL will consider the posting insufficient.

DOL says it will consider electronic posting to satisfy the FMLA posting requirements where, for example, 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. In these circumstances, where there is no physical establishment where employees are employed or where interviewing or hiring takes place and the electronic posting is accessible to employees and applicants at all times, DOL will consider such electronic posting to meet the regulatory requirement that the notice be posted in a conspicuous place where employees are employed so as to permit employees and applicants to readily observe a copy.

FAB 2020-7 is available at: https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/fab_2020_7.pdf

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