COMPLYRIGHT™

Employee Posting Laws: How Noncompliance Increases Your Company's Exposure in Employment Litigation

Introduction

Employment lawsuits continue to increase, year after year, and judgments are skyrocketing as workplace laws impose tighter restrictions and employees become more aware of their rights.

In a recent national survey of in-house attorneys for U.S. corporations, it was reported that labor and employment matters were the most frequent source of lawsuits filed against businesses in 2016. Once again, labor and employment topped the list of litigation matters that posed the greatest concern to their companies in the future – the same top concern for the past ten years. The amount of concern among corporate counsel coincided with the fact that labor and employment litigation was actually the most numerous type of litigation pending against the companies in the past year. Source: *Litigation Trends Annual Survey by Norton Rose Fulbright, LLP.*

The continued economic challenges and low hiring rates during 2016 also produced more employment-related case filings, both by laid-off workers and government enforcement attorneys. Even more are expected in 2017. A study published in the Stanford Law Review by John Donohue and Peter Siegelman (The Changing Nature of Employment Discrimination Litigation, 43 Stan. Law. Rev. 983 (1991)), gives a clear picture of employment litigation trends during an economic downturn:

- When the economy goes into a recession, there is a dramatic increase in the number of employment lawsuits filed in federal court. A scarcity of alternative employment serves as a catalyst for litigation.
- The single largest predictor in the long-term growth trend of case filings is the national unemployment rate. When the economy booms, employment discrimination case filings fall in the next half-year; when the economy slumps, case filings rise over the next half-year. This phenomenon explains roughly 95% of the variance in the number of cases filed. A modest rise in the current unemployment rate from 4% to 5.5% could generate a 21% increase in the number of employment discrimination claims.
- The average damage award to a successful plaintiff rises in business downturns, particularly with respect to employment discrimination suits. Because the length of time it takes for a plaintiff to find another job increases in a recessionary economy, monetary awards are elevated.

Lawsuits alleging violations of the Fair Labor Standards Act (FLSA) reached record highs in 2016. In fact, wage and hour litigation filed under the FLSA produced more rulings in 2016 than any other type of workplace class action (including employment discrimination and government enforcement litigation). Wage and hour litigation now represents the prime litigation risk in the workplace. Employers can expect to see record-breaking FLSA filings in 2017. Various factors are contributing to the fueling of these lawsuits, including new FLSA regulations on overtime exemptions in 2016, which have been delayed in terms of implementation due to legal challenges by states, minimum wage hikes in many states, and the intense focus on independent contractor classification. For wage and hour class actions, the monetary value of the top ten private lawsuits entered into or paid in 2016, significantly increased from 2015, totaling over $695 million. Source: *2017 Workplace Class Action Litigation Report by Seyfarth Shaw LLP.*

Meanwhile, on the governmental enforcement front, both the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (DOL) expanded and intensified their administrative enforcement activities and litigation filings in 2016. The EEOC's private sector administrative enforcement activities secured more than $347 million in monetary benefits in 2016. Employers are likely to face even more such claims in 2017.

The DOL also undertook aggressive enforcement activities in 2016. Over the past several years, the DOL's Wage & Hour Division (WHD) has fundamentally changed the way in which it pursues its investigations. According to the DOL, since early 2009, the WHD has closed 200,000 cases nationwide, resulting in more than $1.8 billion in back wages for over 2 million workers. In 2016, employers finally saw the impact of these changes on the WHD's enforcement priorities, and 2017 is apt to bring much of the same.
Source: *2017 Workplace Class Action Litigation Report by Seyfarth Shaw, LLP.*

Basic Facts About Posting Compliance

Most employers are aware that federal and state laws require them to post certain notices throughout their businesses informing applicants and employees of their workplace rights. Specifically, federal law requires employers to post six separate employee notices (five for businesses with fewer than 50 employees). State laws require multiple employee postings and, depending on the state where the business operates, this could mean posting up to 15 additional postings per state (for a total of 21 state and federal postings at each posting site). In some industries (e.g., healthcare and food service), there are additional employee posting requirements.

The postings are issued by multiple agencies. There is not a "one-stop" government resource for posting compliance. See Appendix A for a chart showing how many different postings are required for each state, and how many different state agencies an employer would have to contact in each state to obtain the posters.

The postings change frequently, but the government typically does not notify businesses when changes occur. Since 2005, there have been approximately 150 federal/state posting changes each year, and about 50% of the changes are considered "mandatory" by law – requiring either new postings or replacement of outdated ones.

Staying on top of posting laws can be time-consuming, but ignoring them is a risk most businesses cannot afford to take. Failure to post mandatory employment notices can result in steep government fines (see Appendix B); however, this is not the most compelling reason to comply with posting requirements. Many employers have learned the hard way that missing or outdated postings can significantly increase their exposure in employment litigation – especially in discrimination lawsuits, FMLA cases, and class-action FLSA litigation.

Beyond Government Fines: Understanding the Risks of Noncompliance

Posting compliance can serve as an employer's first line of defense in an employment dispute or enforcement action, and noncompliance can turn a manageable dispute into an expensive legal matter. Here are the most significant ways that noncompliance with posting requirements can increase an employer's exposure in litigation and agency enforcement actions:

1. Noncompliance with posting laws can extend "statutes of limitation" in employment lawsuits, allowing recovery for time-barred violations and increasing the period of recovery for back wages.

2. Failure to post the required FMLA notice can give rise to a private lawsuit by interfering with an individual's FMLA rights.

3. Government agencies, judges and juries consider an employer's posting compliance as evidence of "good faith" under various legal standards, providing a defense against heightened penalties such as punitive damages, liquidated damages, and increased sanctions associated with "willfulness."

Following are explanations of these concepts, along with examples to demonstrate the potential impact in litigation or agency enforcement actions, followed by supporting case law and citations.

1. "Equitable Tolling" of Statutes of Limitation

Noncompliance with posting laws can extend statutes of limitation, allowing recovery for time-barred violations and increasing the period of recovery for back wages.

Case law unequivocally establishes that an employer's failure to post mandatory employee notifications can result in "equitable tolling" of the statutes of limitation under various employment laws. This means the period for filing lawsuits is extended, and plaintiffs can recover damages (e.g., back pay) for violations occurring over a longer time than otherwise allowed by law. The doctrine of equitable tolling is read into every federal statute of limitation, including employment laws. In fact, courts have applied the doctrine as a result of an employer's failure to post employee notices in litigation involving:

- Title VII of the Civil Rights Act (Title VII)
- The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA)
- The Fair Labor Standards Act (FLSA)

The results of extending the statutes of limitation can be devastating for employers defending employment claims. There are three major consequences, all having a direct impact on the financial outcome of a claim (supporting case law is provided below):

A case that would otherwise be time-barred is allowed to proceed

The limitation period for filing most federal discrimination claims is 180 days (300 days in "deferral jurisdiction" states with their own fair employment agencies). Under the FLSA, the statute of limitation is two years (or three years for willful violations). State laws usually provide slightly longer limitation periods.

Statutes of limitation dictate the amount of time an individual has to file a claim after a violation has occurred. For example, if an employee is terminated on January 1, 2013, and believes the termination was a result of unlawful discrimination, he only has 180 days (or 300 days) from that date forward to file a claim against his employer under Title VII of the Civil Rights Act.

Statutes of limitation can be an employer's greatest defense in a lawsuit or agency proceeding. They are an absolute defense that bars a claim from going forward. Courts routinely dismiss cases, often by summary judgment without the necessity of going to trial, merely because the claims were filed too late. Agencies also refuse to take charges filed by aggrieved individuals when the alleged violations occurred outside of the limitation period.

By extending the statute of limitation, failure to post can cause an employer to spend legal fees defending a case that otherwise would not even exist. A recent study shows that an employer sued for discrimination on average faces the following costs just to defend a case:

- Attorneys' fees if the case goes to trial: $250,000
- Attorneys' fees if the case settles before trial: $95,000
- Manager time expended in the claim process: 40 hours
- Employee time expended in the claim process: 40 hours
- Employee time spent investigating the claim: 60 hours
- Employee time spent preparing for trial: 60 hours

In addition to the costs of defense, the employer also faces potential liability for the alleged violations, and could end up paying millions to satisfy a legal judgment for a claim that never should have been brought.

This was illustrated in a recent case. An employee filed an age discrimination lawsuit more than a year after his termination. The employer argued that the case should be dismissed because the period for filing discrimination lawsuits had expired (employee had to file his claim within 300 days of the alleged discrimination under the New York State Division of Human Rights). The employee argued that the case should proceed because his employer failed to post the required notices of employee rights, and the employer never told him how to file a claim.

The employer lost in this case. The judge acknowledged that the employee filed his claim after the deadline had passed, and his case would have been dismissed. However, the employer's failure to display the required posters allowed the employee's lawsuit to proceed. If the notices had been posted, the case would have been dismissed, and this employer would have avoided the costs of defense and any potential liability. *Zheng v. Wong*, 2009 WL 2601313 (E.D. N.Y. 2009)

In a more recent case, an employee filed a claim to recover unpaid wages under the Fair Labor Standards Act more than three years after the alleged violations. The employer argued that the case should be dismissed because the period for filing had expired. The employee's claim for equitable tolling rested entirely on the fact that the employer failed to conspicuously post the Department of Labor FLSA notice and therefore the case should be permitted to proceed. The Judge in this case agreed with the employee and the employer's motion to dismiss was denied. *Leon v. Pelleh Poultry Corp.,* 2011 WL 4888861 (S.D. N.Y. 2011); *see also Cruz v. Maypa*, 773 F.3d 138 (4th Cir. 2014)

Employer's ability to defend against old claims is compromised

The purpose of statutes of limitation is to protect defendants from the unfair disadvantage of defending old or "stale" claims.

An employer's defense of an old claim is compromised because:

- Important evidence may have been lost, damaged, or destroyed.
- Documents covered by records-retention laws are likely to have been destroyed after legal retention limits expire.
- Witnesses are difficult to find, and may have moved out of the jurisdiction.
- Key employees and managers who are essential to the employer's defenses may have moved on to other jobs and no longer have a vested interest in the case or loyalty to the employer.
- Memories fade or become fuzzy, making it difficult to recapture the facts surrounding an employment decision.

It is extremely difficult for an employer to defeat a claim under these circumstances. Unlike criminal cases, employers have the burden of establishing certain defenses (or disproving allegations) to avoid liability in disputes involving alleged discrimination or wage and hour violations. Juries already have a predisposition against corporate defendants in lawsuits (most people tend to identify more with individuals over corporations or management), and not having a strong defense supported by solid witness testimony and documentation can mean the difference between a successful defense (including dismissal without trial) and a staggering jury verdict.

Employees are entitled to recover damages for additional years of violations

When the statute of limitation is tolled, an employer's legal exposure increases because the plaintiff can recover damages for violations occurring over a longer period of time. A plaintiff who ordinarily would only be entitled to recover damages for two years, for example, could feasibly win damages for violations occurring all the way back to his employment start date or the date when the alleged violations began.

The effect of extending the limitation period can be overwhelming, particularly in FLSA cases, in which class actions are increasingly common. In a class-action suit alleging misclassification of exempt/non-exempt workers, a violation is likely to affect hundreds of workers spanning a period of years – beginning with the employer's initial classification of that position. Employers often have practices or policies in place for years without even knowing they are illegal. Common examples include unlawful payroll deduction policies (e.g., making unlawful uniform deductions, or reducing salaried/exempt employees' pay for hours or days missed in a workweek), automatic meal break deductions, not counting job-related training as hours worked, and nonpayment of unapproved overtime.

Illustration: In a class-action lawsuit of 100 workers, it is determined that each plaintiff is owed $3,000 in unpaid wages for each year of employment, adding up to $300,000 in total damages for a one-year period. Under the FLSA's two-year statute of limitation, the maximum damages awarded to all 100 workers would be $600,000 (excluding attorneys' fees, costs, or liquidated damages). Recovery for additional violations occurring outside the two-year limitation period (two years before initiating the lawsuit) would be time-barred. However, if the statute of limitation were tolled, the plaintiffs could potentially go back in time and recover damages for all violations that occurred throughout the course of their employment. In this case, if the class of plaintiffs were affected by violations going back an average of six years, the employer's exposure would increase from $600,000 to $1,800,000. Liquidated damages (assessed based on lack of "good faith") would increase the judgment to $3,600,000, with additional damages to cover the plaintiffs' legal fees and costs.

Employers have been "stung" by this doctrine in several real-life court cases. For example, in *Kamens v. Summit Stainless, Inc*., 586 F. Supp. 324 (E.D. Pa. 1984), two employees sued to recover for unpaid overtime under the FLSA. The employer argued that the plaintiffs' recovery should be limited to two years according to the statute of limitation under the FLSA. However, the court allowed the plaintiffs to pursue damages going back five years because the employer had not posted the required FLSA posting. The court explained that "an employer's failure to post a statutorily required notice of this type tolls running of any period of limitations." *See also Rong Chen v. Century Buffet and Restaurant,* 2012 WL 113539 (D.N.J. 2012)

2. FMLA Liability

Failure to post the required FMLA notice can give rise to a private right of action and civil liability by interfering with an individual's FMLA rights.

FMLA regulations unequivocally state that failure to provide FMLA notices gives rise to a private right of action in civil court. Specifically, Title 29 C.F.R. Section 825.300(e) states:

> *Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.*

This regulation is consistent with previous court decisions addressing the issue. In *Fry v. First Fidelity Bancorporation*, 1996 WL 36910 (E.D. Pa. 1996), Mrs. Fry sued for damages under the FMLA alleging that her employer failed to reinstate her to her previous position (or a comparable one) after she returned from maternity leave. The company claimed it was not liable under the FMLA because Mrs. Fry had forfeited her FMLA reinstatement rights by taking 16 weeks of leave, exceeding the FMLA's 12-week leave provision. Mrs. Fry claimed that the company's violation of FMLA notice requirements misled her into requesting an additional four weeks of leave, amounting to an interference with her right to seek FMLA reinstatement upon her return.

The court agreed with Mrs. Fry, noting that the company failed to comply with FMLA notice requirements (it did not display the required FMLA posting or otherwise inform her of her FMLA rights), and the employer's violation of FMLA notification requirements constituted illegal interference with Mrs. Fry's FMLA rights.

In a more recent case, the U.S. Department of Labor (DOL) filed suit following an investigation by its Wage and Hour Division that found the Putnam County Board of Education unlawfully terminated an employee when he asked to take time off to care for a parent with a serious health condition. Investigators found that the school board retaliated against the employee for requesting leave that was FMLA-protected when it first attempted to force him to resign and then ultimately terminated his employment. According to the DOL, the school board failed to provide the employee with any of the required FMLA notices about his rights under the law, which prevented him from asserting his FMLA rights and hindered his ability to make an educated decision about requesting leave. Also, the school board did not post any notice of employees' rights under the FMLA in conspicuous places as required by law and failed to include adequate information notifying all employees of FMLA leave protections in its employee handbook. A federal district court in West Virginia approved a consent judgment ordering the Putnam County Board of Education to pay $50,000 in back wages to the former employee. The judgment also ordered the defendants to implement several specific measures to ensure future compliance with the FMLA. *Harris v. Putnam County Board of Education* (No. 3:13-cv-09357, S.D. West Virginia 2013)

3. Posting Compliance as Evidence of "Good Faith"

Evidence of "good-faith" compliance efforts provides employers a legal defense against heightened penalties such as punitive damages, liquidated damages, and increased sanctions associated with "willfulness."

The determination of "good faith" is based on a review of all the evidence surrounding an employer's violation. "By its very nature, the question of good faith is fact intensive and implicates a question of credibility for the trier of fact," the court said in *Bayles v. American Med. Response of Colorado, Inc.*, 937 F.Supp. 1477, 1489.

Posting compliance comes into evidence in almost every employment dispute involving laws/issues covered by the mandatory federal postings. Whether it's a government investigation or private lawsuit, one of the first requests made to the employer is to demonstrate proof of posting compliance. In an agency proceeding, posting compliance is assessed during an on-site investigation and/or by affidavit of the employer's representatives. In a civil lawsuit, plaintiffs' attorneys typically inquire about posting compliance in initial rounds of discovery (through written interrogatories, documents requests, and requests for admissions). Further inquiries are made about posting compliance through witness interviews, depositions, and subpoenas issued to third parties – including poster companies that may have provided the postings at issue.

Courts have specifically referred to posting compliance as evidence of "good faith" in employment proceedings. Posting compliance provides evidence of good faith because it demonstrates to judges, juries and other triers of fact that a business takes employment laws seriously, that it has made efforts to comply with the laws and prevent violations, and that it keeps employees informed of their rights and protections under the laws.

Impact on Punitive Damages

Title VII of the Civil Right Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) allow for increased damage awards known as "punitive damages" against an employer who intentionally violates the law and exhibits "malice or reckless indifference" to the federally protected rights of the plaintiffs. *Kolstad v. American Dental Ass'n.*, 527 U.S. 526, 535 (1999)

Punitive damages are issued in addition to standard damages for back pay, front pay, emotional distress, attorneys' fees and costs. Punitive damages typically make up the largest portion of a plaintiff's total recovery.

The amount of punitive damages awarded depends largely on the size and financial resources of the employer. The purpose is to ensure the punishment has a significant enough impact on the employer to prevent future violations.

In the landmark case of *Kolstad v. American Dental Ass'n.*, 527 U.S. 526, 545 (1999), the U.S. Supreme Court provided a mechanism for employers to avoid punitive damages based on evidence of good-faith compliance efforts. Specifically, the court held that an employer can escape vicarious liability for discrimination or harassment committed by its managers when the managers' violations are "contrary to the employer's good-faith efforts to comply with Title VII." This holding has provided corporate defendants a complete defense against liability for punitive damages in hundreds of cases filed after the Kolstad decision.

In *Lopez v. Aramark Uniform & Career Apparel, Inc.*, 426 F. Supp. 2d 914, 964 (N.D. Iowa 2006), the court specifically referred to the employer's failure to post the required EEO notice as a factor that precluded it from asserting the Kolstad "good-faith" defense. The employer's noncompliance with posting requirements provided evidence of its "indifference" to the plaintiffs' rights and to EEO compliance generally and, thus, did not support a finding of good faith. As a result, the court determined that the jury had properly awarded punitive damages, allowing each plaintiff to recover $260,000 in punitive damages, along with damages for lost wages, emotional distress, attorneys' fees and costs.

Assessment of "Liquidated" Damages

An employer's "good faith" is a key factor in determining whether a violation results in liquidated damages (also known as "double damages") under the following laws:

- Family and Medical Leave Act (FMLA)
- Fair Labor Standards Act (FLSA)
- Equal Pay Act (EPA)
- Age Discrimination in Employment Act (ADEA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)

Any employer who violates the FMLA, FLSA or EPA is liable to affected individuals for the amount of actual lost compensation – plus an additional equal amount known as "liquidated damages." Liquidated damages are commonly referred to as "double damages" because they double the plaintiff's recovery of compensatory damages. Liquidated damages are assessed automatically when a violation is established under these laws.

There is, however, a "good-faith" defense that gives the court discretion to reduce or eliminate an award of liquidated damages. To take advantage of this defense under the FMLA, FLSA or EPA, an employer must establish that it acted in "good faith" and with reasonable grounds to believe it did not violate the plaintiffs' rights. 29 U.S.C. § 2617(a)(1)(A)(iii); 29 U.S.C. § 260

Evidence of good faith also helps to reduce or eliminate liquidated damages in disputes brought under the ADEA and USERRA. Under these laws, liquidated damages are not automatic; instead, they are awarded when an employer's violation is deemed "willful." A violation is considered "willful" if the employer "knew or showed reckless disregard for the matter of whether it violated the law." *Koehler v. PepsiAmericas*, 2008 WL 628925 at *5 (6th Cir. 2008)

Under both standards for assessing liquidated damages, a showing of good faith can have the effect of reducing or eliminating the double-damage penalty, essentially cutting the employer's exposure for compensatory damages in half.

Courts have specifically recognized an employer's compliance with posting requirements as evidence of good faith when assessing liquidated damage awards. For example, in *Blake v. CMB Construction*, 1993 WL 840278 (D. N.H. 1993), the court refused to apply the "good-faith" defense, making specific reference to the employer's non-compliance with FLSA posting requirements as a factor in its determination. (See Blake at *7.) Similarly, in *Patterson v. Browning's Pharmacy & Healthcare, Inc.*, 961 So.2d 982 (Fla. 5th DCA 2007), the court refused to apply the good-faith defense because the employer had not informed the plaintiff of her rights through mandatory FMLA notification requirements.

Conclusion: Noncompliance Is Not Worth the Risk

Due to the increasing media attention around employment litigation, heightened government enforcement, and high-profile verdicts, employees are becoming more aware of their legal rights in the workplace. With every employee termination, layoff, demotion, or other adverse employment action, there is a risk that the affected individual will seek legal advice or contact a government agency. As jury verdicts in employment cases continue to skyrocket, more attorneys are paying attention to employment laws and initiating claims against employers. Attorneys with experience handling employment lawsuits are also learning to maximize results and take advantage of the legal implications around posting compliance.

This means it is more important than ever to get it right when it comes to employment law compliance. Posting is one of the simplest yet most important aspects of compliance. Employees who are aware of their rights are likely to notice that employee postings are missing, and may be quick to conclude their employer is hiding something or doesn't take compliance seriously. If a dispute arises, they will have an easier time getting the attention of a contingency fee-based attorney or government enforcement agency, and the consequences from there can be devastating.

Given the magnitude of legal exposure and other negative consequences associated with noncompliance, it is not worth the risk to ignore or haphazardly comply with posting requirements. Lawsuits and agency proceedings against employers are at an all-time high, and employers cannot afford to open themselves up to additional liability by overlooking posting compliance.

Appendix A

Total Postings and Different Issuing Agencies by State

(Last updated January 2017)

State	Total Federal & State Mandatory Postings	Number of Different Issuing Agencies to Contact
Alabama	11	5
Alaska	12	5
Arizona	18	9
Arkansas	10	7
California	21	7
Colorado	13	5
Connecticut	16	8
Delaware	14	4
D.C.	17	7
Florida	11	8
Georgia	15	7
Hawaii	16	5
Idaho	10	6
Illinois	12	8
Indiana	15	9
Iowa	11	5
Kansas	11	6
Kentucky	13	6
Louisiana	20	5
Maine	14	6
Maryland	16	7
Massachusetts	13	7
Michigan	15	7
Minnesota	12	6
Mississippi	11	6
Missouri	12	5
Montana	11	5
Nebraska	10	5
Nevada	16	7
New Hampshire	15	6
New Jersey	20	6
New Mexico	13	7
New York	17	7
North Carolina	14	8
North Dakota	9	6
Ohio	11	7
Oklahoma	11	8
Oregon	14	8
Pennsylvania	14	6
Puerto Rico	9	4
Rhode Island	15	6
South Carolina	13	8
South Dakota	8	4
Tennessee	14	7
Texas	10	7
Utah	13	7
Vermont	16	4
Virginia	10	5
Washington	11	6
West Virginia	11	7
Wisconsin	16	5
Wyoming	10	4

Appendix B
Federal Posting Requirements and Citations of Authority

POSTER	STATUTORY/REGULATORY AUTHORITY
EEO	**29 CFR § 1601.30** (a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program that has an obligation under Title VII or the ADA shall post and keep posted in conspicuous places upon its premises notices in an accessible format, to be prepared or approved by the Commission, describing the applicable provisions of Title VII and the ADA. Such notice must be posted in prominent and accessible places where notices to employees, applicants and members are customarily maintained. *(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, makes failure to comply with this section punishable by a fine of not more than $525 for each separate offense.*
FLSA	**29 CFR § 516.4** Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. *(Fines not specified.)*
OSHA	**29 CFR §1903.2 (a) (1)** Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material. **29 CFR§ 1903.15** *The penalty for a posting requirement violation under section 17(1) of the Act, 29 U.S.C. 666(i) shall not exceed $12,675.*
FMLA	**29 CFR § 825.300** (a)(1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, whether or not it has any "eligible" employees, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text... *An employer that willfully violates the posting requirement may be assessed a civil monetary penalty by the Wage and Hour Division not to exceed $166 for each separate offence.* (e) *Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.*
USERRA	**38 USCA § 4334** (a) Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees. *(Fines not specified.)*
EPPA	**29 CFR § 801.6** Every employer subject to EPPA shall post and keep posted on its premises a notice explaining the Act, as prescribed by the Secretary. Such notice 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. **29 CFR § 801.42** *(a) A civil money penalty in an amount not to exceed $20,111 for any violation may be assessed against any employer for: (7) Violating any other provision of the Act or this part.*