

LABOR & EMPLOYMENT ADVISORY

Where to Hang a Poster When Employees Work From Home



Last week, the president signed into law the Families First Coronavirus Response Act (FFCRA). The FFCRA provides groundbreaking rights and obligations for American citizens and businesses alike. Two of the most significant changes were enacted through the Family and Medical Leave Expansion Act (FMLA Expansion Act) and the Emergency Paid Sick Leave Act (Paid Sick Leave Act).

Under the FFCRA, covered employers are required to post and make available the Department of Labor (DOL) FMLA Expansion Act and Paid Sick Leave Act poster. The poster informs employees of their rights under the FFCRA. The FFCRA requires that employers post notice of the act's requirements in a conspicuous place on the premises where notices are commonly posted. The classic examples are employee lunch and break room areas, frequently visited by employees.

However, during the COVID-19 pandemic, many employees are working remotely. Thus, a poster in the break room cannot effectively inform employees of their rights and obligations. In light of this concern, the DOL has provided that an employer may satisfy the posting requirement by emailing or directly mailing the poster to its employees or by posting the notice on an employee information internal or external website.

Only covered employers are required to comply with the posting obligation. Covered employers are those employing "fewer than 500 employees." While this coverage definition appears to be straightforward, there are several nuanced aspects that may qualify or disqualify an employer for



Brooke Colaizzi
Member
Denver
303.299.8471
[Email](#)



Carissa Davis
Associate
Denver
303.299.8327
[Email](#)

coverage, such as aggregation of subsidiaries or the counting of employees who have taken a leave of absence. Individuals who have been laid off need not receive the notice, as the notice only applies to current employees. If a given state provides for greater protections than the FFCRA, covered employers are still obligated to post the FFCRA poster. The notice may be obtained free of charge by contacting the DOL Wage and Hour Division at 1.866.4.USWAGE (1.866.487.9243). Alternatively, employers may download and print the notice at the following link: <https://www.dol.gov/agencies/whd/posters>. Please note that different posters are available for private and federal employers.

Beyond the notice requirement, the FFCRA presents novel and complex employment-related issues. The DOL informal guidance is not clear, and regulations have not been issued at the time this advisory is distributed. Further, some DOL guidance appears to modify rights and obligations provided in the FFCRA. While the DOL is issuing guidance literally by the hour, our employment attorneys are working diligently to assess the situation and help our clients come into compliance by April 1, 2020, the date that compliance is mandated. Contact a Sherman & Howard attorney to address individual business concerns.