November 17, 2022

Have You Told Your Employees About Their Rights? New Workplace Posting and Distribution Requirements

Keeping up with the myriad of notices relating to federal, state and, in some cases, local laws that must be posted in conspicuous areas of the workplace can be challenging for employers. In certain cases, employers may be required to distribute notices individually to employees as well. The U.S. Equal Employment Opportunity Commission (EEOC) recently updated one of its posters and, even more noteworthy, the New Jersey Division on Civil Rights (NJDCR) has initiated a campaign to spread further awareness of New Jersey employment laws, including by requiring employers to distribute to employees notices that were previously only required to be posted.

Updated EEOC Poster Applicable to Employers in All States

The EEOC recently replaced its "EEO is the Law" poster with a new "Know Your Rights: Workplace Discrimination is Illegal" poster. The new poster can be found here. Similar to the prior poster, the new poster provides information about federal laws prohibiting discrimination in the workplace and how employees or applicants who believe they have experienced discrimination can file a complaint. Some of the notable changes include more understandable language; a statement that sex discrimination includes discrimination based on pregnancy, sexual orientation and gender identity; and a QR code that employees can use to access the EEOC's website. The EEOC requires employers to display the poster in a conspicuous place and encourages them to also post the notice digitally on their websites. The EEOC has clarified that in certain scenarios, such as when employees work remotely and do not visit the employer's workplace on a regular basis, a digital posting may be the only posting. Employers also should be aware of posting requirements under other federal laws.

Updated Posters and Distribution Requirements for New Jersey Employers

The NJDCR also recently adopted new and amended regulations designed to promote greater awareness of the New Jersey Law Against Discrimination (NJLAD) and the New Jersey Family Leave Act (NJFLA). Employers were already required to conspicuously post notices advising employees of their rights under the NJLAD and NJFLA. Recently, however, the NJDCR:

- updated the NJLAD and NJFLA posters (which can be found here);
- made clear that employers may now satisfy the NJLAD and NJFLA posting requirement by displaying the notices on an Internet or intranet site rather than on a physical bulletin board if all employees have access to the site and are notified of the notices' display there;
- added a requirement to distribute the NJLAD and NJFLA notices to employees on an annual basis (including by December 31 of this year) and upon request, through e-mail or printed material (such as a paycheck insert, new-hire onboarding documents, an attachment to an employee handbook or a flyer distributed at an employee meeting); and
- launched a social media "Know Your Rights" campaign, which encourages employers, business owners and the public to post photos of the required posters when they see them displayed, using the hashtag #CivilRightsNJ.

In addition to the new requirements, New Jersey employers must ensure their compliance with other existing posting and notice distribution requirements. For example, depending on their size, employers must also display posters relating to gender equity, child labor, workers' compensation, wage payment, unemployment insurance, temporary disability benefits, the New Jersey Conscientious Employee Protection Act (CEPA), family leave insurance, paid sick leave and worker

misclassifications. Some of these notices must also be distributed to employees (and in certain cases, in different languages, depending on employees' primary language) and some notices, including but not limited to those relating to gender equity and CEPA, must be distributed to employees on an annual basis.

What Should Employers Do Now?

Employers should immediately review their posted notices to ensure they all are up to date, including replacing the old EEOC poster with the new one. Employers with remote workforces also should consider whether they need to supplement their physical posting with a digital posting or if digital posting alone is sufficient. New Jersey employers must also ensure that the updated NJLAD and NJFLA posters are conspicuously posted in their workplaces. Those employers that utilize internal websites or intranet sites should consider whether it is more practical for them to satisfy the NJLAD and NJFLA notice posting requirement by displaying those posters on such sites. New Jersey employers must further ensure that by the end of the year, they distribute to employees all notices that are required to be distributed, including but not limited to the updated NJLAD and NJFLA notices, whether physically or electronically.

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