

## How Should Employers Comply with Required Display of Employment Law Posters and Distributions in a Remote Workplace?

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Employers questioning whether or not [New Jersey Executive Order 107](#) is still in effect should know that it remains so, requiring that “All businesses or nonprofits in the state, whether closed or open to the public, *must accommodate their workforce, wherever practical, for telework or work from home arrangements.*” As a result, many employers still have at least a portion of their workforce working remotely. However, employees working remotely does not obviate an employer’s obligation to ensure that employees have access to the appropriate employment information posters and have provided the necessary distributions.

Even during Covid-19, employers are still obligated to provide and distribute the required employment notice disclosures to all employees. The U.S. Department of Labor (“DOL”) issued [the following guidance for remote postings and distributions](#). The following summary of employer notice obligations has been extracted from this DOL guidance:

### Continuous Posting of Employment Notices

Several statutes and their corresponding regulations require employers to “post and keep posted” or require the posting of a notice “at all times,” and therefore do not permit employers to meet their notice obligations through a direct mailing or other single notice communication to employees. If the notice must be continuously posted, the DOL will only consider electronic posting an acceptable substitute for the continuous posting requirement if:

- all of the employer’s employees exclusively work remotely,
- all employees customarily receive information from the employer via electronic means, and
- all employees have readily available access to the electronic posting at all times.

This DOL definition ensures the electronic posting satisfies the statutory and regulatory requirements that such postings be continuously accessible to employees.

Where an employer has some employees at the worksite and others teleworking full-time, the employer may supplement a hard-copy posting requirement with electronic posting, however, the DOL encourages both methods of posting.

### Individual Employment Law Notices

Some of the statutory provisions permit employers to meet notice requirements by delivering individual notices to each employee. Where particular statutes and regulations permit the delivery of notices to individual employees, the notice requirements may be met via email delivery (or another similar method of electronic delivery), **only** if the employee customarily receives information from the employer electronically.

### Access to Employment Notices

If an employer seeks to meet a 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. A number of the statutory provisions require that affected individuals be able to readily

see a copy of the required postings, where an employer chooses to meet a worksite posting requirement through electronic means, the same requirements apply in the electronic format. As a practical matter, a determination of whether affected individuals can readily see an electronic posting depends on the facts. For instance, the affected individuals must be capable of accessing the electronic posting without having to specifically request permission to view a file or access a computer.

Consistent with its existing regulations, 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. Furthermore, consistent with DOL practice, 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 a 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.

If you are an employer with concerns about posting and distributing required employment notices or to request a list of the New Jersey required notices (state and federal), contact [Tracy A. Armstrong, Esq.](#) or any member of our [Employment Law](#) Team.

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