

# HR Compliance Audit: Do You Comply with All Workplace Posting Requirements?



All jurisdictions require employers to post information in the workplace notifying employees of their employment, safety and other rights. Here's what you need to know to ensure your organization complies with posting requirements.

## WHAT'S AT STAKE

Posting requirements are a bit like seat belt laws. The police generally don't stop you for not wearing a seatbelt. But if they stop you for another traffic infraction and notice you're not wearing a seat belt, they'll probably add that offence to your ticket. Similarly, OHS and Employment Standards inspectors don't usually show up at a workplace because they're worried about posting violations. But it's one of the first things they look for once they're there. And if they don't see the required information posted, according to one OHS lawyer, they'll take it as a red flag of non-compliance and may intensify the inspection.

### How Posting Affects Your Liability Risks

#### Not Posting Hurts

In addition to getting you fined and raising the suspicions of inspectors, failure to post required information increases your risks of liability for OHS, ESA, labour relations and other offences.

Example: A company doesn't post the names of employees qualified to provide first aid at the workplace as required by OHS laws. As a result, an employee who collapses doesn't get the CPR she needs and dies. In the subsequent prosecution, the company claims that it showed due diligence, i.e., used all reasonable efforts to comply with first aid rules and prevent the violation. But because it didn't post the required first aid information, the court pooh-poohs its due diligence defence.

#### Posting Helps

The fact that you do post required information may enable you to avoid liability for a violation.

Example: An Ontario call centre employee terminated as part of a mass layoff claims that the employer didn't provide the group termination notice required by employment standards laws. But the OLRB tosses the complaint finding that the employer had "made every effort to fulfill its obligations under the Act and regulations" by posting a notice of mass termination in the workplace and to each employee's pay stub [[Duff v. Pollara Inc.](#), [2007] CanLII 1266 (ONLRB)].

## WORKPLACE POSTING LAW MADE SIMPLE

### Why

Posting is all about ensuring that employees get key information about their employment rights, particularly with regard to:

- Salary, wages, work schedules and other employment terms; and
- Workplace health and safety.

## How

Posting requirements go beyond simply making the information available to employees if they ask for it. It requires you to actually display the information in the workplace in a paper format that's unobstructed and easy to access.

## Where

While a couple of jurisdictions including Manitoba and Sask. require employers to provide a bulletin board to display safety committee information, the laws simply say that the information must be posted in a conspicuous location(s) where employees are likely to see it. Examples: Locker rooms, break rooms and other areas that employees frequent.

## How Long

With limited exceptions, the required information must remain posted until it's no longer accurate or up to date. Examples: Minutes of an October safety committee meeting can be replaced with minutes from the November meeting; notices about overtime averaging agreements can be taken down once those agreements expire.

## What

The key to complying with posting requirements is knowing which kinds of information you have to post.

Although each jurisdiction is different, there are 5 sets of laws that require employers to post employee information in the workplace:

## Employment Standards

Employment/Labour standards laws, which are designed to ensure that employees get fair wages, hours, vacations, leave, etc. require employers to post information about the terms of their employment, including:

- Minimum wage schedules or information (NB, NL, PEI, SK, YK);
- Information about the company's work schedule and hours of work (FED, AB, NB, NS, SK);
- Copies of or notices about averaging and other arrangements affecting overtime pay (AB, MB, ON, SK);
- Notice of termination of a group of employees (FED, NB, ON, QC);
- Notice that the employer has applied and/or received a permit or exemption allowing it to do something different from what the employment standards require, e.g., with regard to paying overtime; and
- Notice when the permit or exemption is amended or cancelled.

### **The Ontario ESA Poster—You No Longer Have to Post It**

Until recently, Ontario employers had to display the most recent version (currently Version 8) of the Ministry of Labour poster "What You Should Know about the Employment Standards Act" notifying employees of their basic ESA rights. But under Bill 66, Restoring Ontario's Competitiveness Act, 2019, which took effect this April, employers only have to make the poster (currently in Version 8) available to employees and don't have to post it in the workplace.

Make sure to check what the employment/labour standards laws of your jurisdiction require you to post.

## Labour Relations

Laws regulating trade unions and collective bargaining require employers to post certain kinds of information providing notice about:

- Certification efforts, i.e., attempts by a union to get certified to represent the employees in the workplace;
- Attempts by an employer to revoke a union's certification;
- An employer's voluntary recognition of a union without requiring a certification vote; and/or
- Union votes.

Make sure to check what the labour/industrial relations laws of your jurisdiction require you to post.

## OHS & Workers' Comp

Employers must post basic information about employees' health and safety rights and work conditions, including:

- Information about the workplace joint health and safety committee (JHSC) or health and safety representative (safety rep), including member names and contact information and the minutes of most recent meetings;
- Copies of the OHS Act or Regulations (or parts thereof);
- The company's OHS, workplace violence and harassment policies;
- Workers' compensation information summaries;
- Basic first aid information including the locations of first aid kits and names of employees at the workplace trained to provide first aid;
- Fire and emergency response plans or procedures;
- Inspection reports, stop work and other enforcement orders issued by government officials pertaining to the workplace; and/or
- Notice and current status of the employer's application for variances to or exemptions from specific OHS requirements.

### Posting OHS Information vs. Posting Warnings & Hazard Notices

This article is about postings of general OHS information in common areas of the workplace as opposed to technical health and safety information that employers must post at or near the site of a particular hazard or hazardous operation, e.g., warning notices, no-smoking signs and information about hazardous noise levels or how much weight piece of equipment can safely lift.

Make sure to check what the OHS and workers' comp laws of your jurisdiction require you to post.

## Pay Equity

Three jurisdictions (FED, ON and QC), have or are in the processing of adopting laws requiring employers to implement systematic plans to identify, eliminate and compensate retroactively for gaps in pay between women and men who perform substantially equivalent work at the same establishment. One of the things employers must do to implement the pay equity process is post information keeping employees apprised and engaged, including:

- Notices informing employees of their rights to equal pay and participate in the workplace pay equity process;
- Information about the workplace pay equity committee, if one exists;
- A copy of the organization's pay equity plan;
- Notification of pay gaps identified and how they have been or will be rectified, including via payment of compensation adjustments to women in job classes that

- were identified as being underpaid; and/or
- Results of required periodic pay equity plan audits.

Make sure to check what the pay equity laws of your jurisdiction require you to post

## **HOW TO COMPLY**

HR directors should do an audit to determine if their organization complies with all posting requirements. The easiest way to do that is to click on the links to the summary of posting requirements under each law in your jurisdiction.