

Day file



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

September 22, 2009

[REDACTED]

Re: Request for Opinion
Electronic Posters
RO-09-0101

Dear [REDACTED]:

I have been asked to respond to your letter dated July 17, 2009 to Commissioner M. Patricia Smith in which you request an opinion as to whether the use of electronic posters satisfies the requirements for posting in the New York State Labor Law. Your letter cites a recently enacted Federal regulation that authorizes the use of electronic posting to satisfy the posting requirements of the Family Medical Leave Act in support of your argument that electronic posting of notices should be sufficient to satisfy the posting requirements of the New York State Labor Law.

While the Department appreciates the information provided by your letter regarding the Federal Government's change in policy and regulations relative to the permissibility of electronic posting, such change does not require this Department to take similar steps. Matters of legislative intent, public policy, and state statutory interpretation are certainly best left to the states when state law is at issue. Accordingly, please be advised that the fact that the Federal Government has promulgated regulations which permit electronic posting does not, in any way, relieve employers of the posting requirements imposed on them through the New York State Labor Law.

It is worth noting, however, that this Department has, in previously issued opinion letters, taken the position that an employer may satisfy its notice requirements under Section 195(5) of the Labor Law (requiring written notification of sick leave, vacation, personal leave, holidays and hours of work) through making such policies available to employees electronically. However, unless employees have easy access to computers during work hours with the ability to print the policies free of charge to the employee, such notice shall not be deemed to be in satisfaction of the employer's requirements under Section 195(5). The Department's policy of permitting electronic notification is aimed at ensuring that

Tel: (518) 457-4380, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

employees are provided with the same notice that they would otherwise receive through the receipt of a written, i.e. paper, copy of the policies.

While the purposes behind providing notice and requiring posting may, at first blush, appear identical, in contrast to the requirements set forth in Section 195(5) which may be satisfied through electronic notice, requirements to post information are not uniformly satisfied by providing a copy of the posting, electronic or otherwise, to the employee. The posting requirements were presumably intended to ensure that employees had *continuing* and easy access to information regarding their rights and the employer's duties under the Labor Law. This continuing access recognizes that employees could, at any time, need the information contained in the poster and that such information would be most meaningful when such need arises. For example, a poster regarding Workers' Compensation coverage might pass unnoticed by an employee who is in good health but would provide invaluable information to the same employee after he or she has been injured on a job. Similarly, a poster regarding protections against workplace discrimination would take on greater import for an employee who feels victimized by such behavior. While an employee might not read and digest all the content of the poster until the time the information is needed, constant viewing of the poster in a common area would have alerted him or her to the fact that rights and obligations existed under law. Neither of these benefits is derived from a poster provided one time to employees at the time of hiring or information posted via computer. Nor are employees likely to scroll through numerous pages of intranet posted notices to find pertinent notices should they become injured or suffer some other form of harm at work. This approach would not only be tedious but it also presupposes that employees realize there is a notice that is pertinent to their circumstance and should be searched for in order to obtain important information regarding their rights. In fact, posting requirements recognize that we can presuppose just the opposite; hence the requirement for conspicuous, continuous notice.

These are some of the concerns that mitigate against a determination regarding the propriety of electronic posting. Should you have any additional information which you believe this Department would find helpful in considering the future permissibility of the electronic posting of notices, please do not hesitate to provide such information. We will be happy to consider it further.

This opinion is based on the information provided your letter dated July 17, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

JGS:mp

cc: Carmine Ruberto