Supreme Court ruling on workplace discrimination defines ‘sex’

In June, the Supreme Court ruled that sex discrimination at work includes treatment based on a person’s sexual orientation and gender identity.

The ruling means that employers must make sure their workplace policies and procedures do not discriminate on this basis, but the court’s decision probably won’t bring a labor law poster change.

The protection against sex discrimination is found in Title VII of the Civil Rights Act of 1964. Information about employee rights under this law is on the Equal Employment Opportunity (EEO) is the Law poster.

Because this ruling relates to the definition of “sex,” and because “sex” is already on the poster, it is doubtful that the ruling will bring a mandatory posting change.

Déjà vu, FMLA style

A similar situation occurred a few years ago. The Supreme Court ruled that the definition of “spouse” under the Family and Medical Leave Act (FMLA) includes employees in legal same-sex marriages.

While this meant employers needed to make sure their policies were in line with the ruling, it did not bring a change to the FMLA posting because the word “spouse” was already on the poster.

While the definition changed, the poster stayed the same.

Never say never

The probability of a mandatory change to the EEO is the Law poster is low, but isn’t nonexistent. The poster does note that sex discrimination includes pregnancy discrimination. It’s possible that sexual orientation and gender identity could be added as well.

The Equal Employment Opportunity Commission (EEOC) has not indicated that a poster change is imminent. Because a mandatory posting change is always a possibility, however, the J. J. Keller & Associates Update Service is a great option for employers.

Customers with the Update Service automatically receive a new poster whenever a mandatory change occurs. They don’t have to worry about watching for the change — a new poster will arrive automatically.

Bottom line

Employers should take action now to make sure company policies do not discriminate on the basis of sexual orientation or gender identity. There is currently no indication that employers will need to post a new EEO is the Law poster but it’s not a bad idea to have the Update Service, just in case.
Status report: Tipped employee rule might change FLSA posting

The Department of Labor has proposed changes to the Fair Labor Standards Act (FLSA) and we’ll find out in November if these are likely to bring a mandatory posting change.

What’s the rule change?
The FLSA regulates the federal minimum wage, overtime pay, and tip credits. In October 2019, the Department of Labor (DOL) published a proposed rule that would clarify an employer’s ability to take a tip credit for an employee’s time spent on duties that are related to tipped work.

As proposed, the rule also would allow the DOL to fine employers who unlawfully keep employee tips.

How does this relate to the poster?
This new enforcement authority could bring a mandatory change to the FLSA poster, as the poster currently lists the other reasons the DOL can issue penalties.

When will this happen?
The Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions, published on July 1, estimates that a final tip credit rule will be published in November 2020. The rule would likely take effect 60 to 90 days after publication.

After the wording of the final rule is published in November, we will be able to provide more information on whether or not it will bring a mandatory change to the FLSA poster.

Potential changes: Federal postings
- Fair Labor Standards Act

Potential changes: Local postings
- Bernalillo County (NM) — Employee Wellness Act

Potential changes: State postings
- Colorado — Paid Sick Leave
- Connecticut — Minimum Wage
- District of Columbia — Time Off to Vote
- Maryland — Equal Pay for Equal Work
- New Mexico — Discrimination
- New York — Discrimination
- Puerto Rico — Work Rules
- Vermont — Minimum Wage
- Virginia — Discrimination, Covenant not to Compete
- Washington — Discrimination, Paid Family Leave
Mid-year minimum wage changes bring poster updates

Minimum wage rates changed in five states on July 1, and businesses in three of those states will need to display a new minimum wage poster.

New posters showing rate increases were issued by Nevada and Oregon. In New York, a tip credit change for miscellaneous employees means a new poster is required.

The minimum wage also increased in Illinois and the District of Columbia on July 1. However, businesses there do not need a new poster if a current minimum wage notice is already on display. The new rate is already part of the poster.

### State minimum wage updates
**Effective July 1, 2020**

<table>
<thead>
<tr>
<th>State</th>
<th>Minimum wage</th>
<th>Tipped Employee Rate</th>
<th>New poster needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>$10</td>
<td>$6</td>
<td>No</td>
</tr>
<tr>
<td><strong>New York</strong>*</td>
<td>$11.80 to $15 for miscellaneous industry employees, depending on location</td>
<td>$10.35 to $13.85, depending on location and amount of tips received</td>
<td>Yes</td>
</tr>
<tr>
<td>Nevada</td>
<td>$9 with no health benefits offered</td>
<td>None</td>
<td>Yes</td>
</tr>
<tr>
<td>$8 with health benefits offered</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>$11.50 per hour — Non-urban</td>
<td>None</td>
<td>Yes</td>
</tr>
<tr>
<td>$12 per hour — Standard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$13.25 per hour — Portland metro</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>$15 per hour</td>
<td>$5 per hour</td>
<td>No</td>
</tr>
</tbody>
</table>

*New York’s June 30, 2020, minimum wage change only impacted the tipped rate for miscellaneous employees*

### Recent changes: Local postings
- Alameda, CA
- Ann Arbor, MI
- Berkeley, CA
- Chicago, IL
- Cook County, IL
- Emeryville, CA
- Los Angeles, CA
- Pasadena, CA
- Milpitas, CA
- St. Paul, MN
- Santa Monica, CA
- San Francisco, CA
- San Leandro, CA
- Santa Rosa, CA

*All changes are for minimum wage postings except for Chicago, which also had a new Fair Workweek Posting requirement take effect for some businesses.*

### Recent changes: State postings
- District of Columbia — Family and Medical Leave Act
- Indiana — Teen Work Hour Restrictions
- Maine — Workers’ Compensation
- Mississippi — Unemployment Insurance
- Nevada — Minimum Wage, Overtime, Rules to be Observed by Employers
- New Jersey — Misclassification
- New York — Time Allowed to Vote, Minimum Wage
- North Carolina — Wage and Hour Notice
- Oregon — Minimum Wage
- Puerto Rico — Women’s Bill of Rights
- South Dakota — Minimum Wage
- Texas — Unemployment Insurance
- Wisconsin — Cessation of Healthcare Benefits

### Recent changes: Federal postings
- Families First Coronavirus Response Act (FFCRA)
MESSAGE FROM THE EDITOR

We are here!

More posting regulations acknowledge remote workers

Do you remember Dr. Seuss’s story “Horton Hears a Who?”

The residents of Whoville had to muster all their strength to be heard, and with Horton’s help they succeeded.

There must be a Horton out in posting regulation land, as more often than not I’m seeing new posting regulations that pay attention to remote workers.

Colorado’s new Paid Sick Leave law, which takes effect on January 1, will require employers to provide the necessary poster electronically or on a web-based platform for remote workers.

In addition, the federal Families First Coronavirus Response Act (FFCRA) posting may be emailed or posted online for employees who telework.

These posters still need to be posted in the office, for workers who will be on site. In addition, they answer a commonly asked posting question: What do I do about my remote workers?

Most posting regulations don’t address this, as they were written long before teleworking was an option. The recent proliferation of remote workers has made the question one that’s tough to ignore, however.

For years, electronic posting on a website has been a great option for businesses with remote employees. It’s wonderful to see posting regulations making this official.

To paraphrase Dr. Seuss, a poster’s a poster, no matter how it’s posted.

Terri Dougherty

Terri L. Dougherty, PHR, SHRM-CP, is an editor on the human resources publishing team at J.J. Keller & Associates in Neenah, Wis. She oversees the editorial content of the employment law poster and sign lines and keeps the products up-to-date. She has written articles and white papers about posting compliance and answers customer questions about posting requirements.

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