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Why Workplace Compliance is Important

Workplace compliance issues effect every organization in some form. Recent surveys indicate that over 80% of U.S. corporations have had litigation lawsuits with former employees. No business is immune to the litigious nature of business and the escalating number of workplace compliance-related lawsuits. But even trained human resources professionals find it a daunting task to keep up with all the rules, regulations, and interpretations by courts and supervising agencies of basic workplace mandates. On top of these, one must also factor in executive orders and state and local requirements.

Executive Summary

- Compliance is the act of meeting prescribed laws, regulations, and practices.
- Workplace compliance, the act of meeting laws & regulations impacting the employer-employee relationship, ensures that employees are treated in a fair manner and are safe from possible harm.
- The three primary benefits of seeking to achieve 100% compliance are: 1) risk mitigation; 2) improved morale; and 3) reputation enhancement. For detailed explanations of these benefits, see “Benefits of Compliance” on page 3.
- There are two types of workplace compliance requirements: 1) mandates, and 2) prohibitions. The actions necessary to achieve compliance with each type of requirement differ in scope and complexity. Refer to page 4 for detailed explanations of how these requirements vary.
- Similarly, there are critical differences between laws and regulations, including how and why they are created. For more information, refer to “Understanding Terminology” on page 4.
- Workplace compliance consists of five main themes: 1) labor law; 2) Occupational Safety and Health Administration (OSHA) regulations; 3) wage & hour requirements; 4) benefit plan compliance; and 5) discrimination & equal employment opportunity (EEO). “Themes of Compliance” on pages 6 and 7 provides specific examples of the laws & requirements associated with each theme.
- There are several elements to complying with laws and regulations, but the most important elements are 1) employee training; 2) policies & procedures; and 3) recordkeeping. Pages 9-11 explain why each element is critical to complying with mandates & prohibitions.
- Fines, penalties, and judgments pose the most serious consequences of non-compliance, but consequences can vary by type of violation and employee size. “Consequences of Non-Compliance” on page 12 provides specific fine & penalty amounts for the most common violations.
- To achieve full compliance, businesses must undertake several one-time & ongoing activities, including keeping policies current and staying up-to-date with frequently changing laws & regulations.
- Personnel Concepts publishes hundreds of worry-free, All-on-One compliance solutions to help businesses achieve & maintain 100% compliance with a myriad of workplace requirements.

Over 80% of U.S. corporations have had litigation lawsuits with former employees.
What is Workplace Compliance?

Compliance is the act of meeting prescribed laws, regulations, and practices. Workplace compliance refers to the process of meeting obligations under workplace laws that are designed to ensure that employees are treated in a fair manner and are safe from possible harm. Each law and regulation carries with it certain notification requirements, some mandating posters in conspicuous places and others demanding written policies and procedures. Detailed recordkeeping is also part and parcel of many initiatives.

Frequently changing laws and regulations create an increasingly complex administrative challenge for U.S. businesses seeking to achieve and maintain 100% compliance. These developments may occur at the state, federal, or local levels, and require diligent monitoring by employers and HR professionals to stay current.

Recent Regulatory and Legislative Developments

This list was last updated as of December 2018.

**May 2018:** Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act, which requires nationwide consumer reporting agencies to provide “national security freezes” free of charge to consumers. Security freezes allow a consumer to prohibit the release of their credit report. The security freezes are essentially limited to parties seeking the consumer’s information for credit purposes and do not apply to parties who seek the report for employment, insurance, or tenant-screening purposes.

The May 2018 legislation also extended from 90 days to one year the minimum time that nationwide consumer reporting agencies must include an initial fraud alert in a consumer’s file.

**September 2018:** The Bureau of Consumer Financial Protection issued an interim final rule updating two model disclosures to reflect changes made to the Fair Credit Reporting Act (FCRA) by recent legislation. The FCRA applies to all businesses who seek information that meets the definition of a consumer report (background check) on an applicant or current employee and that information is compiled by a consumer reporting agency. The model notices (Summary of Consumer Rights and the Summary of Consumer Identity Theft Rights) have been updated to include a statement regarding an individual’s new security freeze right.

**October 11, 2018:** OSHA released new guidance to clarify the Department’s position that 29 C.F.R. § 1904.35 does not prohibit workplace safety incentive programs or post-incident drug testing. Action taken under a safety incentive program or post-incident drug testing policy would only violate 29 C.F.R. § 1904.35 if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health.

**October 17, 2018:** the U.S. Department of Labor (DOL) released the Fall 2018 Regulatory Agenda, which reveals the DOL’s plans for rule changes over the next two years. Most notably, the agenda shows that the proposed white-collar overtime rule has been delayed from its original planned release in January 2019 to March 2019.

In March 2019, OSHA is scheduled to release an Notice of Proposed Rulemaking (NPRM) on updates to its Hazardous Communication standard to align with recent changes to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA also plans to release two final rules in June 2019 concerning OSHA access to employee medical records and changes to rules concerning the tracking of workplace injuries and illnesses.

**October 23, 2018:** the Department of the Treasury and the Internal Revenue Service (IRS), the Department of Labor (DOL), and the Department of Health and Human Services (HHS) issued proposed regulations intended to expand the usability of health reimbursement arrangements and other account-based group health plans (HRAs). In general, the proposed regulations would expand the usability of HRAs by eliminating the current prohibition on integrating HRAs with individual health insurance coverage thereby permitting employers to offer HRAs to employees enrolled in individual health insurance coverage.

**November 15, 2018:** The Employee Benefits Security Administration (EBSA) released two final rules making it easier for employers to object to certain birth control methods under both religious and moral grounds. The EBSA also announced in its Fall Agenda that they planned to release a new final fiduciary rule explaining exemptions for prohibited transactions in September 2019.
Benefits of Compliance

There are three main reasons why employers should ensure their compliance with workplace laws and regulations:

1. **Risk Mitigation**
   According to the International Business Law Firm of Fulbright & Jaworski’s Litigation Trends Survey Report, 9 in 10 employers expect the litigious trend to continue in all areas of employment law with litigation against their organizations to increase or stay the same.

   Implementing policies and procedures that fulfill compliance requirements, honoring training and recordkeeping mandates, and posting required notices and policy statements conspicuously in the workplace can be used in defense during an audit, investigation, or lawsuit relating to violation of compliance requirements. Where compliance efforts are not met, the employer leaves themselves vulnerable to costly injuries, unfair labor practices, agency fines, and employee lawsuits.

2. **Improved Morale**
   Morale can drive an organization to success or can be the fuel that feeds the fires of employee discontent, poor performance, and absenteeism (Zane Ewton, 2007).

   Employers who comply with workplace laws and regulations create an environment where employees feel safe and respected. Human nature feeds off of boundaries and direction. By complying with workplace laws, employers are establishing procedures and policies that dictate a course of action and help employees feel focused and more confident. Additionally, the knowledge that all employees are following the same direction creates an environment of fairness and camaraderie.

3. **Reputation Enhancement**
   Positive employee morale translates not only to improved service and product output, but also leads to an enhanced customer experience. Where a customer witnesses productive workflow, the perception is competency, knowledge, and goodwill. A customer is much more likely to return to an environment that is encouraging safety and fairness.

   Likewise, customers will extend the knowledge that employees are following policies and procedures to that of product production. It would follow that employers who expect their employees to follow rules and care about safety, would also extend the same caution to the product and services that they offer.

   Furthermore, compliance not only benefits employers and employees, it is also meant to protect those who come into the workplace, such as customers. For example, an OSHA compliant workplace prevents costly accidents such as tripping and falling; policies that incorporate Red Flag Rules protect consumers from identity theft; and an EEOC compliant workplace encourages diversity that will likely appeal to a broader customer base.
Understanding Terminology

Workplace compliance requirements can take one of two forms: mandates and prohibitions. In order to comply with workplace laws and regulations, employers first need to understand what they require.

Mandates vs. Prohibitions

Mandates are authoritative commands by a person, group, or agency, dictating what is to be done or how one should act.

Mandates require specific actions, materials, forms, training, etc. These types of requirements explicitly state what affected persons & entities must do. For example, many laws & regulations require employers to post specific notices in the workplace that notify employees of their rights & obligations. Similarly, several OSHA standards require specific training or written safety plans that must include various pre-defined elements or components. Mandates are what most people and businesses think of when they think of compliance.

Prohibitions are laws, regulations, or orders that forbid something.

Prohibitions, meanwhile, prohibit a specific action, behavior, or practice. Complying with prohibitions is more complex than meeting specific mandates.

For example, various state, federal, and local laws expressly prohibit employment discrimination. While these laws define what constitutes discriminatory action, they do not provide specific details on how to prevent or avoid the forbidden conduct. In many cases, employers must simply prove that they took reasonable steps to prevent the unlawful conduct or behavior from occurring. For this reason, prohibitions are often associated with “best practices,” but are nonetheless a common type of compliance requirement.

Laws vs. Regulations

Mandates and prohibitions are created through the passing of laws or regulations. Although often used interchangeably, laws and regulations are separate parts of the same goal.

Laws are created by statutes that originate from legislative bills originally introduced by a legislative body.

In the United States, laws are made at different levels, usually in connection with a governmental entity. Cities, counties, states and the federal government all make laws. Legislative law is created through Congress or state legislative bodies.

For example, Congress has passed laws that protect employees from discrimination and harassment such as the Civil Rights Act of 1991 or the Age Discrimination in Employment Act (ADEA).

Regulations explain the technical, operational, and legal details necessary to implement laws.

Laws often do not include all the details needed to explain how an individual, business, state or local government, or others might follow the law. In order to make the laws work on a day-to-day level, Congress authorizes certain government agencies, such as the DOL, EEOC, and OSHA, to create regulations.
Once the regulation is in effect, the government agency then is responsible for enforcing the regulation. Regulations have the same effect as statutory law, and are frequently updated to reflect new interpretations from court decisions and agency leadership. Failure to comply with either the laws or regulations could result in a citation, fine or lawsuit.

**Federal Laws vs. State Laws**

Federal labor laws apply to employers in every state and are enforced through government agencies such as the DOL, EEOC, and OSHA. However, individual states also have their own agencies that pass laws and regulations that apply to employers only in their state. Generally, those laws are very similar to the federal laws which address the same topic. Occasionally, a state law will be more generous towards an employee than a federal law. In those situations where an employee is covered by both federal and state law, the employee is entitled to the greater benefit or more generous rights provided under the different parts of each law.

The most obvious example of this occurs when a state has its own minimum wage law. When a given state’s minimum wage rate and the federal minimum wage rate conflict, employers must pay the higher of the two to its employees. For example, the federal minimum wage is currently $7.25 per hour. In the state of Washington, where the state minimum wage is $11.50 per hour, Washington employers must pay their workers no less than $11.50 per hour worked. In Wyoming, meanwhile, where the state minimum wage is only $5.15 per hour, most Wyoming employers must pay the higher federal minimum wage rate of $7.25. A chart showing current state minimum wages appears below.

### State Minimum Wage Increases Effective January 2019

<table>
<thead>
<tr>
<th>State</th>
<th>Minimum Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>WA</td>
<td>$12</td>
</tr>
<tr>
<td>OR</td>
<td>$10.75</td>
</tr>
<tr>
<td>NV</td>
<td>$8.25</td>
</tr>
<tr>
<td>CA</td>
<td>$11</td>
</tr>
<tr>
<td>AZ</td>
<td>$11</td>
</tr>
<tr>
<td>NM</td>
<td>$7.50</td>
</tr>
<tr>
<td>CO</td>
<td>$11.10</td>
</tr>
<tr>
<td>CO</td>
<td>$11.10</td>
</tr>
<tr>
<td>MT</td>
<td>$8.50</td>
</tr>
<tr>
<td>SD</td>
<td>$9.10</td>
</tr>
<tr>
<td>NE</td>
<td>$9.00</td>
</tr>
<tr>
<td>MO</td>
<td>$8.60</td>
</tr>
<tr>
<td>AR</td>
<td>$9.25</td>
</tr>
<tr>
<td>OK</td>
<td>$2.00</td>
</tr>
<tr>
<td>AK</td>
<td>$9.89</td>
</tr>
<tr>
<td>HI</td>
<td>$10.10</td>
</tr>
<tr>
<td>FL</td>
<td>$8.46</td>
</tr>
<tr>
<td>PR</td>
<td>$5.08</td>
</tr>
<tr>
<td>NY</td>
<td>$11.10</td>
</tr>
<tr>
<td>VT</td>
<td>$10.78</td>
</tr>
<tr>
<td>MA</td>
<td>$12.00</td>
</tr>
<tr>
<td>RI</td>
<td>$10.50</td>
</tr>
<tr>
<td>CT</td>
<td>$10.10</td>
</tr>
<tr>
<td>NJ</td>
<td>$8.85</td>
</tr>
<tr>
<td>DE</td>
<td>$8.75</td>
</tr>
<tr>
<td>MD</td>
<td>$10.10</td>
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<tr>
<td>DC</td>
<td>$13.25</td>
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<td>WV</td>
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<td>AK</td>
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<td>HI</td>
<td>$10.10</td>
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<tr>
<td>PR</td>
<td>$5.08</td>
</tr>
</tbody>
</table>

If an employee is covered by both federal and state law, the employee is entitled to the greater benefit.
The 5 Themes of Compliance

Labor Law

Labor law compliance exists in order to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

Employers are required by law to display up-to-date state and federal labor law posters and communicate safety and health information to their employees. Additionally, employers must implement effective workplace policies addressing employee conduct, such as workplace violence, sexual harassment, and substance abuse.

To fully protect the company against fines and lawsuits, employers must also ensure that these required employee notices are updated in the event of mandatory law changes, material posting revisions, court decisions, and revised agency guidelines.

OSHA

OSHA regulations (both at the state and federal level) require employers to provide a safe and healthful workplace for employees, reduce or eliminate recognized safety hazards, and comply with standards relating to specific work practices or conditions.

The General Duty Clause of the OSH Act states that each employer “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards” (29 USC 654(a)) and comply with OSHA standards promulgated under the Act (29 USC 654(b)).

Under OSHA laws and regulations, employers are required to:

• Follow all relevant OSHA safety and health standards.
• Find and correct safety and health hazards.
• Inform employees about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets, and other methods.
• Notify OSHA within 8 hours of a workplace fatality or when three or more workers are hospitalized.
• Provide required personal protective equipment at no cost to workers.
• Keep accurate records of work-related injuries and illnesses.
• Post OSHA citations, injury and illness summary data, and the OSHA “Job Safety and Health - It’s The Law” poster in the workplace where workers will see them.
• Not discriminate or retaliate against any worker for using their rights under the law.
**Wage and Hour**

The **Fair Labor Standards Act (FLSA)** is a federal employment law that defines employer obligations relating to employee wages, hours, overtime, and child labor. According to estimates from the U.S. Department of Labor (DOL), over 70 percent of employers are not in full compliance with the act and applicable regulations.

To ensure full compliance, employers must implement policies and pay practices that meet the act’s standards, and must notify employees of their rights and obligations.

The FLSA and related DOL regulations impose specific obligations relating to the following terms and conditions of employment:

- **Wages and hours worked** – minimum wage, tip credits, hours worked, time records
- **Overtime** – overtime exemptions, overtime pay, white-collar duties tests, salary basis policies, recordkeeping
- **Child labor** – prohibited occupations, permissible occupations, limitations on working hours

Many states also have minimum wage laws. Where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

All employers with two or more employees on payroll must comply with various wage & hour, overtime, and child labor standards included in FLSA, regardless of whether they are dually covered by a state minimum wage or child labor law.

**Benefit Plan**

The **Employee Retirement Income Security Act of 1974 (ERISA)** is a federal law that sets minimum standards for retirement and health benefit plans in private industry. ERISA does not require any employer to establish a plan. It only requires that those who establish plans must meet certain minimum standards.

ERISA covers retirement, health, and other welfare benefit plans (e.g., life, disability, and apprenticeship plans). Among other things, ERISA provides that those individuals who manage plans (and other fiduciaries) must meet certain standards of conduct. The law also contains detailed provisions for reporting to the government and disclosure to participants. There also are provisions aimed at assuring that plan funds are protected and that participants who qualify receive their benefits.

ERISA has also been expanded to include additional health laws. The **Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)** amended ERISA to provide for the continuation of health care coverage for employees and their beneficiaries (for a limited period of time) if certain events would otherwise result in a reduction in benefits. The **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** amended ERISA to make health care coverage more portable and secure for employees. Covered entities must implement policies, procedures, and notices to comply with HIPAA regarding privacy, portability and other issues.

All businesses that offer health benefits to their employees must notify plan participants in writing of their rights under ERISA, COBRA, HIPAA, and other applicable benefit plan laws.
Discrimination & Equal Employment Opportunity (EEO)

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or employee because of the person’s race, color, religion, sex (including pregnancy), gender identity, sexual orientation, national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Applicable national legislation includes the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act (ADA) of 1990, the ADA Amendments Act of 2008, the Age Discrimination in Employment Act (ADEA), and others, along with state-specific laws that may go beyond the federal legislation.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

To defend against costly lawsuits, employers must be able to understand these complex laws, adopt effective written policies, implement employee training, and establish clear, effective procedures for the resolution of any complaint or allegation.

Understanding Federal Agencies

There are many federal, state, and local laws that affect the American workplace. While most states have their own enforcing agencies for state laws, the following federal agencies administer and enforce national employment laws:

- **U.S. Department of Labor (DOL):** Administers and enforces most federal employment laws, including those covering wages and hours of work, safety and health standards, employee health and retirement benefits, and federal contracts. This agency has a number of divisions that each focus on a different area of federal employment law:
  - **Wage and Hour Division (WHD):** Administers the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Employee Polygraph Protection Act (EPPA).
  - **Occupational Safety and Health Administration (OSHA):** Administers the Occupational Safety and Health (OSH) Act and hundreds of hazard-specific safety regulations called “OSHA standards.”
  - **Veterans’ Employment and Training Service (VETS):** Administers the Uniformed Services Employment and Reemployment Rights Act (USERRA).
  - **Employee Benefits Security Administration (EBSA):** Administers the Employee Retirement Income Security Act (ERISA); reporting requirements for continuation of health insurance coverage as required under the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA); and the portability provisions of the Health Insurance Portability and Accountability Act (HIPAA).

- **Equal Employment Opportunity Commission (EEOC):** Enforces federal laws that make it illegal to discriminate against an employee or job applicant because of the person’s race, color, religion, sex/gender, national origin, age (40 or older), disability, or genetic information.

- **U.S. Department of Health and Human Services (HHS):** Administers the Affordable Care Act (ACA) and the privacy and security provisions of HIPAA.

- **U.S. Immigration and Customs Enforcement (ICE):** Enforces federal laws governing border control, customs, trade and immigration, including Form I-9 regulations pertaining to employers.

- **National Labor Relations Board (NLRB):** An independent federal agency that enforces the National Labor Relations Act (NLRA), which includes provisions pertaining to protected concerted activities, workplace policies, and unionization.
Employee Training

Workplace training is an essential element of ensuring compliance with applicable laws & regulations. In some cases, laws & regulations mandate specific training. In most cases, training constitutes a reasonable step to prevent prohibited behavior or activities.

Mandatory training requirements exist in various OSHA standards pertaining to workplace safety. OSHA standards addressing lockout/tagout, hazard communication, industrial trucks/forklifts, and personal protective equipment (PPE) require covered employers to implement employee training, and businesses can be cited or fined for failure to comply.

Likewise, some state laws require employee training on various topics. For example, several states, including California, have strict requirements on annual sexual harassment training for employees. Even where no specific mandate exists, employers must consider implementing training on critical issues like harassment/discrimination, workplace violence, and interviewing & hiring laws as a defense against potential lawsuits.

The best way to mitigate possible lawsuits is to educate employees on the legalities of what is acceptable behavior in the workplace. Not only does this show an employer’s good faith effort to comply with applicable laws, it also helps prevent an employee, manager, or supervisor from committing a violation unknowingly and putting their employer at risk.

Respondeat Superior / Vicarious Liability

One of the reasons that proactive training is crucial is because in certain instances, employers can be held responsible for the actions of their employees. The doctrine of respondeat superior (Latin for “let the master answer”) is based on the employer-employee relationship. The doctrine makes the employer responsible for negligence or lack of care on the part of an employee in relation to those to whom the employer owes a duty of care. For respondeat superior to apply, the employee’s negligence must occur within the scope of their employment. Where this occurs, the employer will be held liable for damages or harm.

Under respondeat superior, an employer is held vicariously liable for the actions of those that they trust to care for the employees. One of the most common forms of vicarious liability was exemplified when the Supreme Court ruled (Burlington Industries, Inc. v. Ellerth, and Faragher v. City of Boca Raton) that an employer can be held responsible for harassment committed by a supervisor if the harassment was committed by “a supervisor with immediate (or successively higher) authority over the employee.”

In this case, the standard of liability was based on two principles:

1. An employer is responsible for the acts of its supervisors.
2. Employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

The employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements:

1. The employer exercised reasonable care to prevent and correct promptly any harassing behavior; and
2. The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

If an employer can prove that it fulfilled its duty of reasonable care, (such as training its supervisors on what is considered harassment and how to respond to claims of harassment) and that the employee could have avoided all of the harm (training would communicate the channels necessary to report such harm) but unreasonably failed to do so, the employer will avoid all liability for unlawful harassment.
Policies and Procedures

Having efficient policies and procedures are an important tool that not only communicate to employees what is expected, but it also establishes work practices that, when followed, help mitigate discriminatory treatment. There are a number of policies and procedures that employers can implement that encourage smart employment principles and establish the practices that can act as a defense in a claim of wrongful termination.

Policies need to be communicated to employees whether through a company handbook, training sessions, or in a hiring packet. The following points should always be practiced in regard to workplace policies:

- Repeat the information as much as possible (at least annually).
- Keep policies up to date and revised as workplace situations change.
- Document all policies in writing.
- State potential consequences of failure to comply with a particular policy and that the consequences may include termination.
- Require employees to sign documentation saying that they have received, read, understand, and will abide by the policy. Keep copies of the signed documentation in employee personnel files.

Like policies, procedures must also be documented and communicated to employees. In many cases, procedures are used by managers and supervisors and help to ensure non-discriminatory behavior and compliance with state and federal employment laws. Usually, procedures are not only documented but are also communicated through a training program.

Once an employer decides which policies and procedures they want to implement, they need to reference applicable laws to make sure that they comply with state and federal regulations. Employers also need to remember that procedures and policies are viewed by a court of law as a form of contract between an employer and employee, so they need to be very carefully worded so as to avoid implying a meaning that wasn’t intended.

Essential Workplace Policies

While some legal experts caution against all-inclusive employee handbooks for a variety of reasons, employers of all sizes must consider adopting and enforcing formal, written policies to address their primary legal risks. The following is a list of essential workplace policies that can help businesses mitigate or avoid liability under applicable laws.

- At-will employment
- Harassment and discrimination
- Disciplinary action
- Attendance
- Leaves of absence
- Safety and health
- Workplace violence
- Pregnancy leave and accommodations
- Salary deductions
- Breaks and meal periods
- Overtime
- Timekeeping
- Employee classification
- Confidentiality
- Social media
- Jury duty
- Paydays
- Vacation pay
Recordkeeping

More than 20 employment laws contain provisions that require employers to create, maintain, and retain certain personnel records. The agencies that enforce employment laws are empowered to request and review an employer’s personnel records during an investigation or audit. Fines for non-compliance with recordkeeping requirements can vary based upon what law is requiring the recordkeeping. Additionally, failure to meet recordkeeping requirements can prove costly in an employee lawsuit, as personnel records are commonly used as part of an employer’s defense in a wrongful discharge or discrimination lawsuit.

Examples of some of the laws that contain recordkeeping requirements include:

**Fair Labor Standards Act (FLSA)** – Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee’s full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee’s workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee’s wages are paid (e.g., “$9 per hour,” “$440 a week,” “piecework”)
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee’s wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

Each employer shall preserve for at least three years payroll records, collective bargaining agreements, and sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.

**Immigration Reform and Control Act (IRCA)** – Under the IRCA, I-9 Forms (Employment Eligibility Verification Forms) must be retained for three years after date of hire or one year after date of employee’s termination, whichever is later.

**Occupational Safety and Health Act (OSH Act)** – The Log 300 Form and the 300A Summary of Occupational Injuries and Illnesses, or approved equivalents, must be retained for five years following the end of the year to which the records relate. Form 301 (Supplementary Record of Injury or Illness) or its equivalent must also be retained for five years. Medical and exposure records must be obtained for the duration of employment plus 30 years. (Note: some OSHA standards include additional documentation and record retention requirements).
Consequences of Non-Compliance

There are a number of consequences that employers face when they are not in compliance with the various labor laws including agency fines and employee lawsuits. There are three categories of monetary damages that can result when an employer is found in violation of a labor law:

- **Compensatory damages** pay victims for out-of-pocket expenses caused by the violation (such as costs associated with a job search or medical expenses) and compensate them for any emotional harm suffered (such as mental anguish, inconvenience, or loss of enjoyment of life).

- **Punitive damages** are considerably or greatly higher than the measurable value of the injury. Punitive damages are meant not to compensate the aggrieved party but to punish the offending party for its reckless or unconscionable actions or conduct.

- **Liquidated damages** are equal to the amount of back pay awarded the victim.

A victim of a labor law infraction also may be able to recover attorney’s fees, expert witness fees, and court costs.

In addition to monetary penalties, there are also several effects that result from non-compliance, such as the time and effort that must be invested to defend against violations and lawsuits, reduction in employee morale, and increased exposure.

The following are summaries of the fines imposed by the various agencies that enforce labor laws:

- Violations of the **OSH Act** or related **OSHA standards** can result in fines up to $12,934 per violation for serious infractions, other than serious infractions, and posting requirements. Failure to abate can also result in fines up to $12,934 per day beyond the abatement day. Willful or repeated violations may result in fines up to $129,336 per violation.

- Non-compliance with **wage and hour laws** can result in fines, back pay, front pay, penalties up to $1,964 per violation, and possible imprisonment for willful violations. Willful and repeat violations that lead to the death of a minor employee can result in fines up to $113,894.

- Failure to comply with **benefit plan notice requirements** can result in fines up to $152 per violation per day, or even disqualification of your health benefit plan.

- **EEO violations** vary depending on the size of the employer: For employers with 15-100 employees, up to $50,000; for employers with 101-200 employees, up to $100,000; for employers with 201-500 employees, up to $200,000; and for employers with more than 500 employees, up to $300,000.
Recent Increases to Fines & Penalties

On Nov. 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 was signed into law to advance the effectiveness of civil money penalties and to strengthen their deterrent effect. The law directs agencies across the federal government to adjust their penalties for inflation each year in January. Additionally, it directed all agencies to issue a “catch up” penalty adjustment, which became effective Aug. 1, 2016.

Listed below are the most relevant penalty increases affecting employers

<table>
<thead>
<tr>
<th>Law</th>
<th>Prior Penalty</th>
<th>Penalty as of 1/3/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Polygraph Protection Act (EPPA)</td>
<td>$20,111</td>
<td>$20,521</td>
</tr>
<tr>
<td>Fair Labor Standards Act (FLSA): Minimum Wage and Overtime Violations</td>
<td>$1,925</td>
<td>$1,964</td>
</tr>
<tr>
<td>Family and Medical Leave Act (FMLA): Willful violation of posting requirement</td>
<td>$166</td>
<td>$169</td>
</tr>
<tr>
<td>Occupational Safety and Health Act (OSH Act): Serious &amp; other-than-serious violations</td>
<td>$12,675</td>
<td>$12,934</td>
</tr>
</tbody>
</table>

Staying in Compliance

Getting a business into compliance with federal, state, and county labor laws is a daunting task for any employer. Keeping a business in compliance can be a full-time job. There are over 225 government agencies that issue laws and regulations with which employers must comply. Approximately 30% of all state and federal mandated workplace postings alone are revised annually. In addition to this, there are regulations and guidelines that are continually being passed which require employers to make changes to policies and procedures, implement new training, provide employee notifications, make updates to their recordkeeping practices, and other important mandates. Failing to comply with a new or updated law or regulation can result in steep fines, costly lawsuits, and in some cases, jail time.

The following are recommended best practices for employers to keep up-to-date with their federal, state, and county labor laws:

- Have a process in place to stay current on regulation and law updates. This can be in-house personnel or a third party company that provides this service for you.
- Update policies and practices immediately to reflect any new or updated change to laws or regulations.
- Train affected employees any time a new law or regulation applies to your workplace.
- Update any required postings or notifications.
- Consult with a labor law attorney when faced with an issue pertaining to any recent law change.
The Personnel Concepts
Approach to Compliance Management

Personnel Concepts has led the labor law compliance industry in developing a skilled, knowledgeable, and experienced research team that keeps constant watch on government regulatory changes and updates clients on changing labor law and OSHA requirements. Its “We Pay the Fine” guarantee was an industry first and is still a mainstay of its strong customer service tradition.

Personnel Concepts’ customers have relied on the company’s products and services for the past two decades to protect them from government fines, employee lawsuits, and other costly consequences associated with non-compliance. Businesses throughout the nation have entrusted their compliance to Personnel Concepts, and the company in turn embraces that responsibility by keeping up to date on changing regulations and tailoring a wide variety of simplified solutions including the following formats:

All-on-One Solutions
To help employers notify employees about their rights under various labor laws, Personnel Concepts has developed an All-on-One notification poster solution. The All-on-One Information Posters include multiple notices to ensure multi-level compliance with general notice requirements and inform employees of their rights and obligations under the law.

Worry-Free Subscription Services
To help employers demonstrate good faith compliance with compliance requirements, Personnel Concepts has introduced Compliance Subscription Services. These exclusive subscription packages include required postings and notices needed to comply and automatic updates for a full year when regulatory changes occur. Additionally, subscribers will also receive a quarterly newsletter to keep them abreast of changes in compliance requirements. Personnel Concepts Compliance Service Subscriptions provide a worry-free solution to the problem of always needing to update outdated posting materials.

NIDA Guidebooks and Manuals
Personnel Concepts uses the NIDA approach (Notification / Implementation / Documentation / Administration) in structuring guidebooks / manuals and developing easy-to-use implementation procedures relating to the kit components:

  Notification – Information to educate the employer about their legal obligations and risks.
  Implementation – Procedures for implementing mandatory compliance efforts, policies, procedures training, and best practices.
  Documentation – Tools for recordkeeping and forms for the purposes of documentation.
  Administration – Plain language guidance intended to educate the employer on steps to compliance.