

It's Compliance, Not Rocket Science

Our HR Compliance Checklist Makes It Easy





Failure to comply? Not with EmPower HR on your side. We're all about helping small to mid-size businesses succeed—and we know that **staying in compliance is critical to the success of your business**. So, let's dive in and make some compliance happen.

HR compliance is one of those certainties in life you can always count on. But with ever-changing laws and regulations, it can be difficult for businesses to keep up. And, if it seems like it gets harder every year, many businesses agree that it has. In fact, an important 2022 survey confirms it.

Compliance was a universal stressor for many organizations over the past year.

Our complete, HR compliance checklist can help you stay on top of changing deadlines, and create policies and procedures that minimize business risk. It includes everything human resource specialists like you need to prepare for an HR audit.

See the documents you need, critical laws you need to be aware of and the best ways to alleviate your compliance concerns. (Step 1: Use this checklist. Step 2: Sleep better knowing your company won't get penalized or fined.)

The more you use it, the less you have to worry — we know you have enough to focus on as it is. The checklist is broken down into these basic categories:

- Interviewing and hiring employees
- Employee benefits
- Time management
- Company policies
- Payroll and taxes
- Diversity, equity and inclusion

63% of organizations reported that their HR department felt significantly more pressure to maintain compliance.

77% were forced to spend more time and energy on new and expanded compliance issues.

Interviewing and Hiring Employees

First thing's first. Compliance regulations kick in before we even get to benefits and payroll—before your first employee even walks through the door. To stay compliant, your hiring process should:

- Ensure diversity in the workplace**
When going through your compliance checklist, be sure that you don't have anything that could violate EEOC laws. (Remember you can't deny any candidates based on disabilities, color, ancestry or gender.) Check Title VII of the Civil Rights Act, Title I of Americans with Disabilities Act (ADA), and the Age Discrimination Employment Act.
- Have compliance-approved job descriptions**
Keep job descriptions for all positions, from management to entry-level jobs, on file and review their minimum qualifications. When you're looking for new employees and posting job descriptions on recruiting sites, be sure they comply with EEOC regulations.
- Use non-discriminatory interview scripts**
You need to avoid asking certain questions during an interview. Some topics to avoid include age, date they graduated, ethnic heritage or church they belong to. These questions directly ask for personal information, and can lead to violation of federal laws.
- Conduct background checks in compliance with state and federal laws**
- Verify form I-9 employment eligibility**
All U.S. employers must properly complete Form I-9 for each individual they hire in the United States. Some states require employers to E-Verify this form.
- Use compliant non-compete, NDAs, invention disclosure or intellectual property agreements**
- Check references in compliance with state and federal laws**
The main federal laws that apply to reference checks are related to discrimination and defamation. Every state has different restrictions regarding the information employers can provide about current and former employees, so be sure you're checking references in accordance with state and federal law.
- Keep application forms**
Keep all application forms and interview evaluations to document reasons for hiring or rejecting in case of an EEOC investigation. Review applications to ensure they are in compliance with state laws.
- Update templates for offer letters and contracts to ensure compliance**
- Properly store all employment documents**

Time Management

Time tracking provides crucial insight into your business, and helps ease payroll, PTO compliance and more. Here are some things to keep in mind when self-checking your HR procedures.

- Periodically verify employee information**
Take the time to validate information like employee addresses. Incorrect information could delay receipt of important information (like W-2 forms) for some workers. You'll also want to do a yearly review and check your records for employees who left the company during the year. Make sure their status was correctly updated.
- Review your time-tracking methods**
Track time for onsite and remote employees for applicable (generally, non-exempt) employees. Be sure to have all valid, up-to-date records of any leave requests and FMLA leave forms on file. Utilize an automated time tracking system to remain compliant when managing employee schedules and PTO time.
- Review your policies around PTO and FMLA leave approval**
Be sure to track FMLA, COVID leave and PTO separately and accurately. Review your payroll policies for Family and Medical Leave Act (FMLA) rights and keep FMLA leave forms on file. Review state-mandated paid sick leave laws to ensure you're following mandated PTO.
- Practice good record-keeping**
Your records must be kept in a safe and accessible location. In case of an audit, certain information—like payroll records and time sheets must be made available to the U.S. Department of Labor (DOL) within 72 hours of a request. Plus, you're legally required to keep records for a number of years. (When in doubt, don't throw it out!) You must keep the following for:

3 Years

Payroll records, union contracts

2 Years

Timesheets, piecework records, wage rate tables, work schedules and record of additions to or deductions from paychecks

- Check your overtime policies and employee classifications**
Remember, you're legally required to pay overtime to non-exempt employees, so be sure to stay compliant with overtime pay and the Fair Labor Standards Act (FLSA.) Keep records of your employees' work hours, and pay overtime to non-exempt employees in accordance with federal law. Finally, and this is a big one, review your employee's classifications and company policy on compensation and overtime pay to ensure you're following compliance regulations.



Avoiding Compliance Chaos: An Example of Overtime Gone Wrong

Failing to comply with federal laws on overtime can be expensive. In 2021, a San Diego drywall company violated FLSA overtime rules—the FLSA requires employers to pay overtime for hours worked over a 40-hour workweek at a rate of at least 1½ times the regular wage.

For New Vision Drywall Inc., the cost of FLSA noncompliance was \$860,000 in back wages and damages paid to Performance Drywall workers, plus a nearly \$50,000 fine. Yikes. Even well-intentioned companies can make compliance mistakes. You simply can't afford to disregard compliance rules.

Payroll and Taxes

Between ever-changing laws, as well as multi-state payroll rules and taxes, payroll is an increasingly complex administrative function. Even a small error can ruin the whole process and leave you with some upset employees. (Don't mess with payroll, people.) Use our tips below to navigate payroll compliance, help avoid tax trouble and maintain positive workforce morale.

Review Fair Labor Standards Act (FLSA) standards

First of all, many provisions of the FLSA apply to all employers. You can review the rules on wages and who's covered on the Department of Labor's page. You'll need to comply with these procedures from the start. For example, you must provide equal pay for equal work to male and female employees.

Review updates to minimum wage

At the start of the year, Be sure to review wage laws and your company policies. There are a number of states and local laws that change the minimum wage mid-year, not just on January 1st. Pay at or above the legal minimum wage (if state wage is different than federal, you must comply with the higher wage.) If your applicable state or local minimum wage rate is increasing, ensure the updated rate is reflected in your employees' pay as of the effective date. Take note of the various exempt salary thresholds that are both federally and state mandated.

Double check all W-2 forms

If you have withheld income, social security or Medicare taxes from any employees, you must file form W-2 with the Social Security Administration by February 1. W-2 reporting must include the aggregate cost of health coverage.

Be sure to double-check W-2s and verify all Social Security numbers or federal employer identification numbers (FEIN). At the end of the year, missing or incorrect numbers could result in a penalty by the IRS of up to \$270 for each return of W-2.

Affordable Care Act - Forms 1094-C and 1095-C

Companies with 50 or more employees must comply with the Affordable Care Act (ACA) and prepare and distribute benefits-related reporting via 1095-C forms to employees. You must provide both the 1094C and the 1095C forms to the IRS.

If you have 50 or fewer employees, or if you are self-insured, you must file the 1095B to all employees and both the 1094B and 1095B to the IRS by the same deadline.

FICA & FUTA forms – Make a note of filing deadlines

Independent contractor payments

In addition to preparing employee tax forms, make sure that qualifying independent contractors receive their correct statements for tax purposes. 1099 contractors may work part-time or full-time hours, which can make it easy to confuse them with your other W2 full-time employees. Double check your employee classifications and comply with what's needed for independent contractors.

Employee Benefits

Most companies offer their employees a laundry list of benefits, including PTO, health insurance, tuition reimbursement, disability insurance and retirement savings. Our checklist items below can help you stay on top of it all. Checking your benefits compliance will help you evaluate the most appropriate policies that satisfy both employees and your bottom line.

Review your mandatory benefits

Check to make sure you're staying compliant with unemployment, workers compensation, social security, medicare and other mandatory benefits (see your state's specific laws.) If your company offers health coverage, review the stipulations of the Affordable Care Act for ongoing compliance.

Have a FMLA plan

Do you know what to do if an employee asks about FMLA leave? Have easy-to-reach information or a one-pager to inform employees about their rights and critical information if they need to take FMLA leave. Plus, have reminders on FMLA policies for HR staff to ensure continued compliance before, during and after an employee takes leave.

Review PTO guidelines

Take a second look at your state and local time off requirements guidelines and resources to ensure your company leave policies are compliant, and ensure they are being followed accordingly. Be sure sick leave, vacation leave, personal time off (PTO) and flexible time off are followed correctly.

Review coverage plans and health insurance policies

Check your group health plan renewal. It's never too soon to prepare for open enrollment. Many group health insurance policies renew on December 1 or January 1, so it's a good idea to review carriers, plans, and rates in advance and consider pricing out alternatives. Prepare communications for employees and schedule informational meetings.

Review healthcare plan filing requirements and deadlines

□ **Ensure health records are kept confidential**

Health records are one of those absolutes in compliance, which means you'll want to keep them in a secure place. Violating HIPAA includes fines up to \$50,000. If it's discovered that the violation occurred due to a lack of training, the employer is penalized. When healthcare professionals violate HIPAA, it's usually their employer that receives the penalty.

□ **Consider voluntary benefits and new perks**

Think about adding voluntary benefits to be competitive. Dental, vision, life insurance and retirement accounts are just the start.

HR Pro Tip

In a red-hot job market, little perks like summer Fridays or an employee gift program can be easy wins. So, review your perks annually. What's working and what can be improved? Adding extra voluntary benefits can boost retention. Some cool perks include:



Company Policies

Sometimes you just need to take a step back and evaluate your approach to employee policies and procedures. Let's break down what you can do to get your employees to buy into your company's rules. Check for compliance on the following company policy requirements.

□ **Sexual harassment training**

Many states have mandatory harassment training requirements for every employee to receive proper sexual harassment training, making it an important step on the HR checklist. Currently, California, Connecticut, Delaware, Illinois, Maine, Washington and New York have statutes requiring sexual harassment training, as do the cities of Chicago and New York City. It can help to have a clear plan for filing a harassment complaint and investigation procedures.

Employee drug testing

Review company drug testing policies to ensure they are in line with federal, state and local government requirements. Double-check that personal documents, drug test results or polygraph tests don't live in general employee files.

Workplace safety

Employers must verify that Occupational Safety and Health Act standards are being followed and identify any safety issues in the workplace. For companies that use chemicals, for example, the safety checklist should include approaches to chemical safety and hazard communications that are federally approved.

Update your employee handbook annually

Your employee handbook can help prevent disputes and lawsuits before they ever happen. It should be updated annually. Having written company policies can go a long way in avoiding or minimizing employer liability. To really conquer compliance, require every employee to provide a written acknowledgment of having received the handbook.

Workplace poster requirements

Ensure the Department of Labor's mandatory posters are displayed in a common area and clearly visible. You must post the notices in conspicuous locations in and around your premises, where employees can readily observe them.

Performance reviews

Determine or check your performance review policy. Do you have a defined company policy on what to do if an employee is underperforming? Are leaders aware of how to coach employees? If you're still using the annual review, now may be the time to consider a more consistent and timely system of feedback.

Check your policies around the Americans with Disability Act (ADA)

Employers should ensure they are familiar with the ADA obligations and have a policy and procedure in place to ensure compliance.

Diversity, Equity and Inclusion

With diversity, equity and inclusion (DE&I) entrenched as an increased business focus across the board, more companies are setting strategic goals to be more inclusive. Here are the compliance checklist items you need to report, as well as best practices to help ensure a more diverse workforce.

Review company policies on diversity

Creating a diverse workplace goes beyond removing bias from hiring practices. Reviewing your policies on diversity will prevent the threat of discrimination claims around an employee's perception of inconsistent work policies, unfair performance evaluations, pay practices or even disciplinary action processes. Analyze your policies on accessibility, workplace harassment and your EEO policy statement to ensure they follow EEOC regulations.

Anti-discrimination training

Anti-discrimination training is mandated in the states of California, Connecticut, Delaware, Illinois, Maine and New York, but it's a good idea for small business owners to provide this training. Check your state's requirements for training, signed acknowledgement and more.

Check Affirmative Action Plan requirements

The EEOC requires some companies to create a diversity and inclusion plan when onboarding applicants, or an Affirmative Action Plan. If your company has 50 or more employees and United States government contracts of \$50,000 or more, the company must create an affirmative action plan.

EEO-1 reporting

If you have more than 100 employees, or are a federal contractor with 50 or more employees, and meet certain conditions, you must submit an annual report to the government that includes employment data categorized by race/ethnicity, gender and job category.

Pay Data Reporting Requirements

Some states have pay data reporting requirements. Employers should be mindful of state pay reporting requirements and be prepared to explain their practices, if needed.

How To Care Less About Compliance

As an HR leader or business owner, you're busy. We understand. If you're interested in spending more time on growing your business and less time worrying about compliance, you've come to the right blog.

Having an outsourced HR partner that works with your internal HR team can be an attractive option for business leaders that want to drive business growth. HR leaders, we'll work with you to ensure you're conquering compliance, so that you can focus on what matters most.

With EmPower HR as your HR partner, you can rest easy knowing your compliance is locked down. Contact us to put some reliance in your compliance.

How EmPower HR Can Help

EmPower HR offers a variety of human resource services tailored to your business needs. Let us handle the HR administrative tasks so you can focus on your business and employees.

Learn more at empowerhr.com

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