

Client HR Compliance Worksheet – Accounting Professional Resource

Recruitment and Retention

1. Job descriptions can be critical in assisting employers with complying with the Americans with Disabilities Act (ADA), aiding in exempt and non-exempt classifications under the Fair Labor Standards Act (FLSA) and/or applicable state law, providing an accurate picture of the job to applicants, identifying key skills and abilities required of the job incumbent, setting goals, and measuring and tracking performance.
2. When writing job advertisements, employers should generally include: the title of the position, company and position highlights, required qualifications and skills, and instructions for applying. Some employers also include salary information. Also, it's important to ensure job advertisements do not include language which might be seen as discriminatory based on a protected class, e.g., implies a preference for a particular sex, race, ethnicity and/or age.

When offering a job to a candidate, whether verbally or in writing, there are several best practices to consider, including but not limited to stating compensation in terms of an hourly rate for non-exempt employees and a weekly or by-pay-period salary for exempt employees. This may help avoid creating an implied contract of employment for a particular period of time, as well as avoid assurances of job security. Further, employers should include an "employment-at-will" disclaimer in the offer letter, clearly stating any contingency issues in the letter. Employers should also document and retain all information pertaining to hiring decisions.
3. In general, it's a good practice for employers to ask applicants to complete an employment application and to be consistent in this practice, so it does not appear to be discriminatory. In addition, employment applications can provide specific information not always found on a résumé. Employers should be sure to use an employment application form that includes an at-will disclaimer and has been reviewed by legal counsel for use in the state/local jurisdiction in which the employee is applying.
4. Employers may be held legally responsible for the behavior of employees who interview job candidates on behalf of the company. To help reduce the risk of potential legal issues for the company, employers should ensure the employees who will be conducting the employment interviews are properly trained regarding applicable laws and know what questions they can and should not ask.
5. Where permitted, conducting post-job offer background checks and drug testing can be an important step in the hiring process and may be required depending on the position and industry. Drug testing programs should generally be reviewed by legal counsel to ensure full compliance with applicable law(s).
6. Human capital management (HCM) refers to the approach that a company takes to managing its most important asset: its people. There are many technology solutions available that can help companies large and small execute their HCM strategy. Choosing an integrated HCM platform can give companies access to high-quality information, while potentially reducing workloads and the risk of propagating inaccurate data.
7. Forms I-9 are required to verify identity and eligibility to work in the United States. Employers may wish to store Forms I-9 separately from the employee's general personnel file in order to facilitate an internal or external audit of these documents. They may also be stored electronically in compliance with electronic storage requirements. And, employers must keep them for three years after the date employment begins or one year after the date the person's employment is terminated, whichever is later. Certain employers may also be required to participate in the federal E-Verify program. The Form I-9 is used in this process as well.
8. Employee turnover can be extremely costly, with some estimating the cost of replacing an employee at two times their annual salary. A high turnover rate can also increase a business' state unemployment insurance (SUI) rate. Therefore, it can be important for employers to know the number or percentage of workers who leave and need to be replaced each year. Turnover rates can also be valuable in the employer's overall recruitment and succession planning.
9. There are a number of benefits available for employers to offer their employees. Offering employee benefits, such as a company-sponsored retirement plan, group health insurance, or even a wellness program, may help make a business more attractive to talent, keep morale high among current workers, and help retain top performers.

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Managing Employees

10. Employee handbooks can provide a way to communicate basic ground rules for employee conduct, set the tone for interpersonal relations, and may help businesses stay more consistent when implementing their policies and practices. However, poorly written or out-of-date handbooks can be a liability where the written policies do not reflect current practices or the written policies are not updated to reflect current applicable employment laws. So, it is imperative that the written policies are reviewed by management and legal counsel on a regular basis.
11. While not legally required, many employers conduct written performance appraisals annually or semiannually – whatever frequency has been established and communicated as the company policy. Additionally, interim or unscheduled reviews may be appropriate if major changes occur in an employee's performance or responsibilities.
12. It's important for supervisors and managers to maintain consistency in how they establish and enforce HR-related policies. Consistency and compliance with company policy as well as applicable employment laws can be critical to mitigate claims of favoritism and discrimination.
13. Employment laws often differ among states, so it's important for employers to know the laws governing termination and final pay in their state. Employers should consult with an attorney or an HR expert when they have one or more employees working in a location other than the one where their business is based.
14. There are often several important documents and pieces of information that a terminated employee must be given before they leave the workplace. Employers should check federal and state laws to make sure they cover all of them.
15. It's helpful to conduct an exit interview with employees who voluntarily resign; this can help the company understand how to improve operations and possibly reduce the likelihood of potential litigation in the future.

Workplace Safety

16. Per the Occupational Safety and Health Administration (OSHA), every business should have an emergency plan in place so that people react appropriately in case of a fire, tornado, toxic gas release, earthquake, or other crisis. The plan should be posted in a highly visible location and communicated to all employees.
17. Every business needs a written safety program to protect employees. Safety programs may be specific to certain industries and worksites.
18. It's important for businesses to have a safety manual that meets OSHA requirements. A safety manual may include a company's workplace safety policies, step-by-step instructions for responding to safety-related situations (e.g., fire, natural disaster, chemical spill), and procedures for investigating and recording incidents.
19. It's important for business owners and managers to be familiar with the OSHA regulations and training that apply to their staff. If, during an inspection, a business has not done its due diligence, according to OSHA, in putting sound safety practices in place, training its workers in these practices, and ensuring that workers follow the rules, it could be hit with an enforcement fine.
20. According to OSHA, "workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening, disruptive behavior that occurs at the worksite." Every employer, regardless of size, should have a workplace violence prevention program in place. Such programs can help shield employees from physical and emotional harm, avoid potentially costly litigation for the employer, and protect the company's reputation.

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Wage and Hour

21. Employers must properly classify employees as exempt or non-exempt based on the provisions of the Fair Labor Standards Act, including the minimum wage and overtime provisions, as well as under any applicable state wage and hour laws. Covered employees who are subject to all provisions of the FLSA are referred to as “non-exempt employees.” These employees may perform work that is routine with set standards and rules. Covered employees who are not subject to some or all provisions of the FLSA are referred to as “exempt employees.”
22. In general, an individual who performs services for a business and is under the control of the employer or business owner as to what will be done and how it will be done will most likely be considered an employee, depending on the law being enforced. If the employer or business owner has the right to control or direct only the result of the work done by the worker and not the means and methods of accomplishing the result, and the individual is economically independent from the employer, the individual may be an independent contractor. However, whether a person is an independent contractor or an employee depends on many factors in each situation.
23. With increased enforcement of the laws and regulations based on employee compensation for hours worked, it’s important for employers to ensure their time and attendance reporting process for non-exempt employees is robust. Maintaining detailed, accurate time and attendance records can help employers accurately track and pay employees for all time worked.
24. Employers must comply with applicable federal, state, and local minimum wage and overtime laws. Some states and local jurisdictions have established minimum wage rates, while others have minimum salary thresholds for exempt status that exceed the federal level. Failure to pay overtime wages correctly to eligible employees can result in fines, penalties, and lawsuits.
25. Child labor laws help protect the educational opportunities of minors and prohibit them from working in occupations that may be hazardous to their health and well-being. The FLSA restricts both the hours and types of work performed by minors younger than 16. The Act also restricts minors ages 16 and 17 from performing work that has been deemed “hazardous.” State laws provide further protection for children.
26. It’s important, though not required, to keep a general personnel file for each employee. Information kept in this file shouldn’t contain any medical information (which should be maintained in a separate file), but should include documents such as certain new-hire paperwork, job descriptions, recruiting and screening documents, compensation information, performance evaluations, disciplinary actions, and termination records.
27. Many federal statutes and regulations require that certain records be kept for a certain length of time. For example, Forms I-9 must be retained on file for three years after employment begins or one year beyond termination, whichever is later. Note that state laws may necessitate longer retention periods for certain records, and some states may have more stringent recordkeeping requirements than others. Local jurisdictions may also set record retention guidelines, e.g., paid sick leave laws.
28. There are a variety of federal, state, and local posters and notices employers are required to display in their workplace. For example, every employer who has employees subject to the FLSA must post, and keep posted, a notice explaining the Act in a conspicuous place in all of their establishments for employees and applicants to see. Posters are sometimes revised, and employers may be required to display the most recent poster.
29. State unemployment insurance (SUI) is designed to provide temporary financial assistance to individuals who became unemployed through no fault of their own — for example, staff who are laid off during a downsizing. However, former employees who were fired for cause may file for unemployment. It’s up to employers to monitor claims and respond in a timely fashion if they wish to protest those claims. Active claims management can help ensure that employers avoid expensive penalties, while controlling SUI costs.
30. Employers with 20 or more employees on 50 percent or more working days during the previous calendar year may be subject to the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA is a program that amends previous bills related to health care and requires qualified group health care plans to offer the option of temporary coverage continuation when it otherwise might be terminated due to a qualifying event. There may be similar state continuation laws that apply to smaller employers.

Businesses that are considered an applicable large employer under the employer shared responsibility (ESR) provisions under the Affordable Care Act — that is, generally any employer with an average of 50 or more full-time employees, including full-time equivalents during the preceding calendar year — must offer adequate and affordable health insurance to their full-time employees and their dependents or risk potentially being assessed a penalty. They are required to provide detailed reporting to the IRS including information on health insurance offered to full-time employees, their spouses, and their dependents.

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31. Facing a charge or complaint from the U.S. Department of Labor or state DOL can result in significant expenses in the form of fines, penalties, and litigation costs. A strong understanding of the pay and recordkeeping provisions under the Fair Labor Standards Act and applicable state law, especially with regard to overtime calculations, can help businesses minimize the chance of facing costly lawsuits and penalties for non-compliance.

Non-Harassment and Violence

32. All managers, supervisors, and employees should complete training on the applicable laws prohibiting harassment in the workplace, how to recognize harassment, and their responsibility to report harassment if it occurs. Employers should also distribute a copy of the company's non-harassment policy to all employees annually and obtain signed hard copy or electronic acknowledgement of receipts from them. State laws may require specific training and/or postings.
33. Facing a charge or complaint from the Equal Employment Opportunity Commission (EEOC), or state Division of Human Rights (or the equivalent agency) can result in significant expenses in the form of fines, penalties, and litigation costs, as well as the staining of a company's good reputation. Being consistent in the application of your employment policies, documentation, and training can help businesses minimize the chance of facing costly lawsuits and penalties for non-compliance.
34. Companies are obligated to conduct prompt, thorough, and objective investigations of all harassment complaints. The extent of the investigation may vary depending on the nature of the complaint. Business owners and managers should be aware of the key elements of the investigation process, such as who the appropriate person is to conduct an investigation; ensuring promptness; being fair, thorough, and considerate; and maintaining confidentiality to the extent possible.

Paychex updates the Client HR Compliance Worksheet and Accounting Professional Resource regularly. Download the most current versions at payx.me/regulatory.

Current as of May 8, 2019. The information provided in this worksheet is meant for general purposes and may not be comprehensive in all areas; it should not be considered legal advice. We recommend employers consult with an HR professional or legal counsel as necessary to discuss the application of policies to their organization.