



HR COMPLIANCE SURVIVAL GUIDE FOR SMALL AND MEDIUM-SIZE BUSINESSES

The Power of End-to-End HR Compliance

Whether a company is big or small, mature or a startup, maintaining compliance across all HR functions is critical to success.



THE HR COMPLIANCE REQUIREMENTS CAN OVERWHELM EVEN THE MOST ORGANIZED HR MANAGERS

The ability to understand and continually comply with changing requirements across the communities in which you operate frees you to focus on your core business

The catch can be that keeping track of HR compliance practices is a tremendous challenge, especially for startups. Losing track can potentially result in claims, costs and damages, and or damages employee morale and company culture, and even force you out of business.

Consider, for example, the need to pay attention to social and cultural movements that can drive new requirements. Black Lives Matter, Stop Asian Hate, the #MeToo movement, the Transgender Rights Movement and gender pay equity are just a few of the powerful social forces shifting the HR compliance environment. While these and other movements can create exciting opportunities for companies to create a more inclusive, equitable and innovative workplace,¹ the HR compliance requirements can overwhelm even the most organized HR managers.

The good news is that there are ways to achieve ongoing, end-to-end HR compliance, which begins when you post a job opening and continues through every stage of an employee's time at your company. Reliable resources—including TriNet, with our expert consultants and numerous guides and publications—can help.

In this HR Compliance Survival Guide, we document how taking an end-to-end approach to HR compliance can play an essential role in helping to mitigate risk and enable your business to thrive.

1. "How Diverse Leadership Teams Boost Innovation", BCG Henderson Institute, accessed April 12, 2022.

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EIGHT CHALLENGES FOR END-TO-END HR COMPLIANCE

1. Recruiting

HR compliance considerations begin as soon as you start recruiting for any new hire. This is especially true as increasing numbers of companies operate across multiple states or localities, either in person, remotely or hybrid.

So, for example, when creating a job posting, be aware that certain states require salary ranges or pay bands to be disclosed at varying stages of the recruiting process and under varying conditions. You will need to know those requirements and respond accordingly.

The concepts of diversity, equity and inclusion (DEI) bring additional considerations. Diversifying your business and creating a welcoming environment has many tangible and intangible benefits, but it's also important to comply with existing laws and regulations. The Equal Employment Opportunity Commission (EEOC) prohibits job postings that discriminate against any applicant who is a member of a protected class through language in the posting itself that encourages a particular type of candidate to apply or discourages another. The EEOC also prohibits recruiting in a discriminatory fashion. For example, an announcement of a job opening only through a particular ethnic community.

But reaching out to diverse communities instead of focusing on a particular protected class can encourage diversity keeping in mind of compliance considerations. For example, industry or student associations can be a great way to connect with historically marginalized or underrepresented talent and, so, can be opportune places to post your job openings. As you do, maintain records of where you've posted, as well as a list of applicants to help you protect yourself in case of an EEOC complaint or lawsuit. Many state and local laws have similar or more expansive protections against discrimination in recruiting and hiring.



The pool of candidates you choose to interview should be as diverse as possible, with the stipulation that all of them are similarly qualified.

2. Interviewing and Hiring

Interviewing is another area that has come under increased scrutiny. A compliant interview process includes questions that remain consistent for all candidates. Questions should stay focused on work experience and skills with no questions about age, religion, marital status, finances or other protected-class issues.

In addition, the “Ban the Box” movement has led many states and localities to prohibit asking an applicant about their criminal background at certain stages of the hiring process, including the interview. Many states and localities also have salary history bans that severely limit questions about an applicant’s past compensation and as noted above, may even require you to clearly provide pay ranges for each position.

In addition, the pool of candidates you choose to interview should be as diverse as possible, with the stipulation that all of them are similarly qualified. Documenting that you interviewed a diverse pool of applicants and based your hiring decision on bona fide skills and qualifications is one way to help mitigate risk of a discrimination lawsuit.

There are several additional considerations as well. Two examples: If you require a job-related test during the interview process, it must be one that does not discriminate in any way. If you intend to use background checks, drug screens or other pre-employment screening, it is best practice to conduct these screens once you’ve extended a conditional offer of employment. Some states or localities may make this a requirement. Background check and drug testing laws and regulations can vary by state, locality, and industry so you should be aware of the compliance requirements when conducting these.

For both recruiting and interviewing, TriNet has numerous resources available to help small and medium-size businesses (SMBs), including an eGuide dedicated to [hiring and onboarding](#) and another on [multi-jurisdictional considerations](#).

Compliance failure can be expensive. For example, a \$5 million settlement paid to 600 courier drivers to cover back wages and damages.³



3. Employee Status and Worker Classification

One of the biggest challenges for HR managers is placing employees in the right employment status, such as exempt and non-exempt. Startups where employees wear multiple hats and work long hours are particularly vulnerable to making costly mistakes in designating employment status. Some may assume it's easier to make an employee exempt, (which means the employee is exempt from overtime pay and minimum wage requirements, as well as other applicable wage and hour requirements) so they can be more flexible. In reality, employee exemption status is firmly based on specific criteria set forth by the Fair Labor Standards Act (FLSA) and applicable state and local laws. There are significant penalties for not complying.

Similarly, some companies may classify workers as independent contractors to avoid offering benefits and meeting employment requirements even though the workers should have been classified as employees. One such case resulted in a \$5 million settlement paid to 600 courier drivers to cover back wages and damages when the Department of Labor found the drivers were cheated out of the minimum wage and overtime pay they were legally owed.²

The example makes clear that failing to properly comply with worker classification standards puts you at risk for incurring significant costs that could grow more expensive the longer your violation goes undiscovered. In addition, misclassification can undermine company morale. Both are good reasons to understand the rules and place workers in the right classification from the outset of their engagement.

2. [California Court Rulings Send Clear Message to Employers Who Misclassify Workers As 'Independent Contractors'](#), U.S. Department of Labor, accessed April 12, 2023

STUDIES SHOW
WOMEN EARN
82 CENTS
FOR EVERY DOLLAR
A MAN EARNS.⁶



4. Wages

Wages are another tricky area. As noted above in the section on recruiting, it is best practice to consider pay range for jobs based on skills and experience regardless of age, gender or any other protected factor. There are several guiding principles.

First, both the FLSA and Title VII of the Civil Rights Act provide federal protections regarding pay. These laws require that pay must be equal for equal work and experience, and it cannot be determined based on sex or any other protected class. According to the EEOC website, “The laws enforced by EEOC prohibit employers from paying employees differently based on race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, disability, age (40 or older) or genetic information.”³ Many states and localities have additional protected classes. This is a very important item for HR managers to navigate properly.

For example, although the numbers have been improving, studies show women earn 82 cents for every dollar a man earns.⁴ There have been efforts to ensure fair wages by requiring reporting to the EEOC and certain state agencies, as well as with the pay equity and salary history ban laws at the state and local levels. To restate: the proper approach is to tie your compensation policy to the role and required experience and skills. Period.

In addition, be aware that failing to comply with federal, state and local regulations for minimum wage and overtime pay can lead to wage and hour claims, as well as punitive penalties in some cases. In late 2020, for example, the Seattle Office of Labor Standards secured a “financial remedy” of more than \$3 million, in part because it found a franchised restaurant group and individuals associated with it failed to pay employees overtime wages, among other violations.⁵

3. **Pay Discrimination**, U.S. Equal Employment Opportunity Commission, accessed April 12, 2023.

4. **“5 Facts About the State of the Gender Pay Gap”**, U.S. Department of Labor Blog, accessed April 12, 2023.

5. **Resolved Investigations**, Seattle.gov, accessed April 12, 2023.

6. *ibid*

Many states now require employers of a certain size to offer their employees a means to save dollars for retirement.



5. Health and Retirement Benefits

Benefits are, of course, a very important factor in attracting talent. While some benefits like paid vacation and health care are standard, more and more companies are sweetening the deal with additional perks, which may include paid volunteer time, education reimbursement and even free meals. It's always important to consider what benefits are required in addition to what is desirable, as well as any HR compliance requirements. Here again, TriNet offers an eGuide that helps you understand how best to gain access to benefits for your employees.

Since the Affordable Care Act (ACA) was enacted in 2010, certain large employers have been required to offer medical plan options to their full-time employees or potentially face a penalty for not offering compliant and affordable plans if at least one full-time employee receives a premium tax credit for purchasing individual coverage through the Marketplace. The law states that an applicable employer who employed a monthly average of at least 50 full-time equivalent employees, or was part of a control group with at least 50 full-time equivalent employees, during the preceding calendar year must offer minimum essential coverage to at least 95% of full-time employees and eligible children. Failure to meet the requirement can result in a penalty of \$2,750 per employee (annualized, as indexed) if at least 1 employee received a premium tax credit, minus the first 30 employees. To put that in perspective, an employer with 100 employees could face a \$140,000 penalty, while an employer with 200 employees could owe \$340,000.⁷

In addition, it's important to understand that there have been many changes since the ACA was enacted. Keeping track of the law's changing requirements is a critical task for HR managers and one that can cost your company dearly if mismanaged.

In addition to the federal mandate on health care, there is a plethora of state regulations like mandatory state sponsored retirement savings programs. Many states now require employers of a certain size to offer their employees a vehicle to save dollars for retirement. In addition to knowing the rules for every state in which your company has employees, you need a solution for administering the plans. Quite often, the details of plan administration are a pain point for employers who are trying to focus on their core business and are not experts on the complicated regulations of 401(k) plans.

TriNet can help startups and SMBs navigate these requirements by offering a top-tier retirement saving program, which can help attract and retain top employees. Moreover, employers that participate in a TriNet-sponsored 401(k) plan can offload most of the burden of 401(k) administration to TriNet, including contribution submission, loan and distribution approvals, 5500 filings, periodic investment reviews and distribution of required annual notices. And because we operate nationwide, clients that offer a TriNet plan comply with specific state requirements. In California, for example, TriNet customers can join a TriNet-sponsored 401(k) plan—a multiple employer plan that complies with the state requirements, so they do not have to offer the state CalSavers program.

⁷ "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act", Internal Revenue Service, accessed April 13, 2023.

6. Paid Leave

Paid sick and safe leave or family and medical leave are other major benefits for employees, but the rules and requirements are quite inconsistent across localities. In addition, certain states, localities, and industries may require paid sick and safe leave, mandating certain requirements such as the number of hours each employee can receive or accrue, sometimes according to the size of the company.

From a compliance perspective, you need to know the state or local policy for every location in which your company operates. It can be quite difficult to keep track, especially as more states and localities join the call for mandatory paid leave. Add to that the federal Family Medical Leave Act (FMLA), various state paid family and medical leave acts, and your own company's paid sick/family leave policy and you have a tangle of potentially similar benefits. It's your role to decipher which should be used first, how to coordinate them all and ultimately help employees leverage their various leave options in the way that is most beneficial to them and meets your compliance obligations.

If you fail to manage leave-of-absence administration consistently and in compliance with applicable requirements, you can demoralize your workforce and risk claims.

7. Multi-State Considerations

For many of the issues discussed above, complexity grows as your business expands. A company with 40 employees in four states or a national firm with business in all 50 states needs to know the nuances of HR compliance issues such as wage and hour, health care, FMLA and leaves of absence, 401(k), and HR-related training requirements for every person in every location.

To complicate things, rules continually evolve as the HR compliance environment changes. As a result, your benefits offerings and HR-related policies and procedures must be revisited at least once a year.

These are very difficult and nuanced concerns for SMBs to navigate on their own. A PEO like TriNet, whose sole focus is HR, can help.



“TriNet allows us to grow easily. The ability to very easily scale and add employees no matter where they live, to be able to offer access to big company benefits as a fairly small organization is going to continue to be a value add for us.”

Kate Schuster

Director of Operations, Learning
Innovation Catalyst

8. Discrimination and Harassment

To begin this complex discussion, it's important to distinguish between DEI initiatives and compliance with anti-discrimination requirements.

DEI initiatives focus on enhancing an organization's culture by celebrating employee diversity. (In the section below on how to create a compliant culture, we discuss DEI in more detail.) Federal, state and local anti discrimination laws, in contrast, are specifically aimed at preventing discrimination on the basis of applicable protected classes. Failing to follow these laws can lead to serious workplace issues and legal action; it can also significantly damage your company's morale and reputation.

Even if your company has agency claims instead of lawsuits filed against you, that still brings with it the related costs of having your HR team and others take time to handle those claims instead of managing day-to-day priorities. This is especially important for small businesses where managers wear more than one hat and are suddenly pulled away to respond to a situation that could go on for years. And again here, the cost can be considerable. In fiscal year 2022, the EEOC received 73,458 new discrimination charges of workplace discrimination, an increase of almost 20% when compared to the previous fiscal year.⁸

The first step to avoiding discrimination claims is understanding the most common issues and how to spot them.

Harassment

Harassment is any unwelcome physical, verbal or visual conduct that is based on a person's protected category. Harassment includes a wide range of offensive behaviors such as, demeaning, humiliating, threatening, upsetting, bullying and those based on discriminatory thinking. A key concept is that harassment does not require intent to be unlawful, conduct may be considered to be harassment if it has a discriminatory impact. Offensive conduct can become unlawful if either enduring the offensive conduct becomes a condition of continued employment or if the conduct creates a hostile work environment.

The classic example of the former is the old sexual harassment standard, when terms of employment, job benefits or favorable working conditions are made contingent, by words or conduct, on acceptance of sexual advances or conduct. Such harassment could involve a promise of promotion or preferential treatment in return for a sexual favor or tolerating sexual advances.

For the latter, a hostile work environment is created when the conduct creates a work environment that would be intimidating, hostile, or offensive to a reasonable person, due to the severity or pervasiveness of the conduct, and the conduct is related to a protected category. It may take the form of derogatory comments, shared pornography, and unwanted touching or other inappropriate behavior. It may occur when someone shares offensive cartoons in the office. The list goes on. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Both types of harassment are morally and ethically wrong but can also destroy morale and result in lost productivity from employees who are disgruntled or distracted or even miss work due to stress-related medical conditions. Other employees are often affected, especially when a claim of harassment raises questions about coworkers and company leadership. Public exposure of harassment can result in damage to a company's reputation, alienate customers and shareholders, and make recruiting new talent or driving new partnerships difficult.

Discrimination

Discrimination is broader than harassment. Harassment is one expression of discriminatory conduct, there can be many more. Discrimination directly relates to how employees are treated in their job roles and applies to any protected class. For example, if a manager has a bias against a particular religious group and schedules those employees for the less desirable shifts, that is discrimination. Another example would be promoting someone or withholding a promotion or raise based on gender rather than qualifications.

Legal precedents around discrimination continue to evolve. For example, one prominent discussion these days is around transgender and LGBTQ individuals in the workplace, because many still suffer both overt and covert discrimination. The Supreme Court ruled in 2020 that Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination and harassment based on gender identity and sexual orientation. This ruling had a significant impact, which is why it is so essential to be tracking this ever-changing environment.

8. <https://www.eeoc.gov/eeoc-fiscal-year-2022-agency-financial-report>. Accessed April 13, 2023

THE BOSTON
CONSULTING GROUP
STUDIED

1,700

COMPANIES IN EIGHT
COUNTRIES AND
FOUND THAT THOSE
WITH MORE DIVERSE
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19%

HIGHER REVENUE DUE
TO INNOVATION.⁹

THE KEYS TO COMPLIANCE

Clear policies are one thing, but at heart, it is a company's core values and culture that hold the keys to compliance. That's why it is so critical that you successfully engage your employees to reinforce company values and strengthen the company's culture. More specifically, many of the most successful companies have intentionally promoted a culture that attracts workers who will embrace a culture and commit to the company's mission. While one size never fits all, companies that are collaborative, customer-centric, safety-focused and efficient are often the most successful with their compliance efforts. Those qualities tend to foster close attention to the concepts below.

Promoting Diversity, Equity and Inclusion

From a compliance standpoint, a diverse, equitable and inclusive culture can certainly help to avoid discrimination claims and lawsuits, but as noted earlier such initiatives contribute much more than compliance. They bring value to a company by adding more diverse view-points and backgrounds. They help encourage a respectful workplace and attract and retain employees who are accepting, tolerant and welcoming to everyone and their contributions.

And they can help improve the bottom line as well. The Boston Consulting Group studied 1,700 companies in eight countries and found that those with more diverse management teams had 19% higher revenue due to innovation.⁹

One key to promoting a diverse, equitable and inclusive culture is strong and visible support from the executive suite. TriNet also has resources available to help you understand best practices that foster this type of culture.

Creating a Zero Tolerance Policy on Harassment and Discrimination

Similarly, a zero tolerance anti-harassment and anti-discrimination policy will clearly establish what conduct is acceptable and will communicate to employees that unacceptable behavior has significant consequences. A good policy should be clear and easy to understand, explain what behavior is unacceptable, provide clear reporting instructions and preferably include an anonymous reporting channel. The policy should make clear that retaliation against anyone who makes a report or participates in an investigation is prohibited. The policy should also detail an investigation procedure (as discussed in more detail below).

Training Your Staff

Culture evolves. That's why keeping your people aware of how changing societal mores affect the workplace is a never-ending imperative. Managers and employees both need regular training to remain up to date on workplace issues and help protect each other and the company from risk. For example, many states and localities have already made sexual harassment training mandatory and you should be tracking this on a regular basis. Similar efforts are gathering steam for encouraging DEI. If you don't have a training and development team, you can consider an outside solution to help you manage this part of your HR responsibility. TriNet, for example, has considerable experience implementing such training.

9. "How Diverse Leadership Teams Boost Innovation", BCG Henderson Institute, accessed April 13, 2023.

10. *ibid*



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When You Need to Take Action

Despite all your preventive measures, you could still find your company facing a complaint. When this happens, you need to be prepared to respond.

When employees have concerns, they need a way to report the issue that will not lead to retaliation. Your HR team should have a process for receiving complaints that doesn't put the employee at risk or create fear, especially if the issue involves their manager or an executive. Your employee handbook should outline a process that includes an anonymous option for employees to report issues. Handle issues immediately, because failure to do so may suggest your company does not take complaints seriously.

Equally important, most complaints of harassment or discrimination and many HR compliance issues will require a skilled investigator who can quickly gather evidence, conduct interviews, suggest immediate corrective action if necessary and properly communicate the investigation's results to the impacted parties. Handling the complaint well could help avoid a lawsuit. However, the complete investigation can take days or even weeks of time-consuming work. Such effort could prove draining for smaller companies without a dedicated resource.

HR COMPLIANCE EMPOWERS YOUR PEOPLE SO YOUR BUSINESS CAN THRIVE

Managing HR compliance from end to end is a daunting task for all businesses. Startups and SMBs, in particular, often lack a full-time HR leader and may have a manager serving two roles, leading HR part-time. Those that do have HR staff typically have to cope with more complexity stemming from having a larger workforce or multi-state operations.

That's why most startups and SMBs could benefit from outside help for HR compliance. A full-service HR provider like TriNet provides timely HR compliance updates for you, freeing you up to focus on your business and your people. And offering your people—your most important asset—a safe, equitable and supportive environment empowers them to accomplish extraordinary things.



About Us

TriNet (NYSE: TNET) provides small and medium size businesses (SMBs) with full-service HR solutions tailored by industry. To free SMBs from HR complexities, TriNet offers access to human capital expertise, benefits, risk mitigation and compliance, payroll and real-time technology. From Main Street to Wall Street, TriNet empowers SMBs to focus on what matters most—growing their business.

Go to **TriNet.com** to get started or speak with a TriNet representative at **888.874.6388**.



Learn all about our tailored solutions at [TriNet.com](https://www.trinet.com) or call 888.874.6388.