

HR High Risk Compliance Checklist

Thousands of employers pay millions settling employment litigation each year. While there are hundreds of regulatory requirements demanded of employers, there are a few dozen responsible for the most costly litigation.



Customize Your Guardian Experience

Review your company's policies with the help of this checklist to find opportunities to reduce liabilities and improve performance.

Compliant Job Applications

- ▶ Job applications being updated to meet state and regional restrictions?
- ▶ State and regional municipalities change what information can be requested on an application. Outdated applications can be the source of discrimination allegations.

Background Checks and Conditional Job Offers

- ▶ Criminal background inquiries cannot be conducted prior to a conditional job offer.

Wage and Employment Notices

- ▶ Nonexempt employees and commission employees must be provided with specific wage information at time of hire and when changes are made. Non-compliant Wage Notices lack detail that foster disputes over wages due.

Compensation Plan Compliance

- ▶ Each compensation practice (hourly, salary, shift differential, bonus, piece rate or commission) have specific regulatory requirements. Non-compliant pay plans can result in back wages and penalties that can escalate with each pay period.

Employee Scheduling Compliance

- ▶ Certain wage orders set maximum hours of work or mandatory days off. Local municipalities may also have scheduling requirements in addition.

Sick Leave Benefits

- ▶ Mandatory Sick Leave requirements are complex. Ensure benefits are paid at the employee's regular rate of pay and all accrual mandates are honored. Few payroll companies understand requirements, payroll configuration mistakes can multiply liability with each Sick Leave Benefit use, validate independently annually.

Validate Correct Computation of Overtime Wages

- ▶ Since 1938, overtime has not been 1.5 X an employee's hourly rate. This misconception is a leading contributor to seven figure wage and hour class action.

Wage Statement Compliance

- ▶ CA Labor Code has nine criteria that must be met for a compliant wage statement. Fines of \$100 per inaccurate wage statement per employee can add up quickly.

Timekeeping Record Retention

- ▶ Lab. Code sec. 1174; Wage Orders (section 7) has specific record retention requirements including: start and stop time of shifts and explanations of any formulas used for incentive plans. Also needed as backbone of wage and hour defense.

Preparation Time

- ▶ If employees must change uniforms, wash up or clean up at work, or engage in other preparatory activity that is required for the job, that time must generally be counted as hours worked.

On-Call or Control Time

- ▶ Under California law, if the employee is under your control, it is likely that you will have to pay him/her even if the employee is just sitting around waiting for something to happen, even at home. Employers can be found liable for thousands of hours in unpaid wages.

Exempt Analysis

- ▶ Federal and state laws exempt certain employees from wage and hour requirements. Exemptions are tightly regulated and based on an employee's actual job duties and has nothing to do with an employee's title. Bi-Annual Review Recommended

Final Wages

- ▶ Ensure that final wages are paid in accordance with California Labor Code. Requirements vary by type of termination and timing.
 - Voluntary Resignation with 72 hours of notice or more
 - Voluntary Resignation with less than 72 hours' notice
 - Involuntary Termination
 - Final Commission Payments
 - Expense Reimbursement
 - Final Pay for Temporary Employees

Vacation and PTO Final Wages

- ▶ Ensure accrual policies are followed in computing accruals earned through the end of the employee's last day worked.

Wait Time Penalties

- ▶ Labor Code section 203 states that if an employer "willfully" fails to pay all wages due to an employee at the time of termination (or within 72 hours if the employee quits without notice), the employer owes that employee one day's pay for every day that the final paycheck is late, up to 30 days.

Family Care (FMLA/CFRA)

- ▶ An employee can take family and medical leave under several different circumstances. Some of these circumstances are FMLA only, some are CFRA only, and some are FMLA/CFRA combined. Ensure that the parameters of all forms of FMLA/CFRA leave are defined and HR can effectively manage duration of protected leave.
 - Family Care (FMLA/CFRA)
 - Medical Care for the Employee (FMLA/CFRA)
 - Medical Care for the Employee's Pregnancy Related Disability (FMLA Only)
 - Baby Bonding (FMLA/CFRA)
 - Leave for a Qualifying Exigency (FMLA Only)
 - Military Caregiver Leave (FMLA Only/Part of leave may run concurrent with CFRA)
- ▶ A leading cause of EEOC and DFEH claims are associated with failure to administer protected leaves correctly.

Discrimination

- ▶ **Hiring**
 - Are state and local laws relating to conviction history information, such as not seeking such information prior to a conditional job offer and following specified notices and processes?

- Ensure California law banning salary history inquiries during the hiring process and prohibiting employers from relying on salary history information in making hiring decisions are honored.
- Ensure each candidate is given the same chance to show they are best for the job and no questions that could be considered discriminatory are used.

▶ Salary Decisions

- Ensure that employees of the opposite sex and employees of different races or ethnicities performing substantially similar work are being paid the same amount or justify the difference under the Fair Pay Act.
- Review Job Descriptions to they support salary decisions and reflect actual job duties, functions, skills, and responsibilities.

▶ Discipline and Discharge Decisions

- Ensure that rules are clear and effectively communicated to all employees.
- Objectively document the events, facts, dates, that lead to corrective action and ensure that consequences are being applied equitably.
- Are performance issues clearly addressed and any ambiguity has been eliminated?

▶ Retaliation

- Any retaliation for making a complaint is strictly illegal, whether the retaliation is obvious (such as discharging the complaining person) or subtle (such as denying a merit increase for being “uncooperative”).
- Educate managers and employees on what constitutes retaliation and ensure Company policy has explicit directions.
- Ensure that all discipline and termination decisions consider the impacted on employees within a protected class and could be subject to retaliation.

▶ Discrimination Reporting Requirements

- Many laws impose reporting duties on employers of 100 or more employees or on employers with federal and state government contracts. Failure to file required reports can lead to penalties and loss of contract opportunities.
- EEO reporting is most common, but Affirmative Action and Veteran reporting may also apply.

Harassment

▶ Company Policy

- The fact that you maintain an anti-harassment policy and an internal complaint procedure does not completely insulate you from liability for sexual harassment. If your policy does not specifically prohibit sexual harassment or if your procedure requires that an employee must first report an incident to a supervisor who might actually be the harasser, the policies and procedures are not effective and are not compliant with the law.

▶ Harassment Investigation

- Employers are required by law to use qualified personnel to conduct impartial, timely, fair and thorough investigations that provide all parties due process and reach reasonable conclusions based on the evidence collected. Acting in a timely manner is required for compliance, ensure your organization is prepared.

▶ Harassment Investigation Summary

- After the investigator collects and analyzes the facts and then draws conclusions, they should document the findings and conclusions in an investigation summary. The summary should include sequence and process followed; factual information relevant to complaint; credibility assessment criteria; and conclusions.

ADA Reasonable Accommodation of Disability

- ▶ A “reasonable accommodation” is any modification or adjustment in a job, an employment practice or the work environment that allows an individual with a disability to enjoy an equal employment opportunity. It is also any modification or adjustment that is effective in enabling an employee to perform the essential functions of the job the employee holds or desires or to enjoy equivalent benefits and privileges of employment that similarly situated employees without disabilities enjoy.
- ▶ Ensure that the ADA Interactive Process is followed and documented to prevent and/or defend allegations of discrimination.

Wrongful Termination

- ▶ While California has an at-will presumption, it is limited by specific statutes and court decisions. Allegations of wrongful termination are regularly based on claims that anti-discrimination or anti-retaliation statutes have been violated.
- ▶ Use a disciplinary action checklist to vet decisions to discipline and ensure consistency.