

Remote Work Compliance:

5 Risks Every Manager Needs to Avoid



About This Guide

If your organization allows remote work, how are you ensuring ongoing compliance with employment laws? These employees may be “out of sight,” but they should never be “out of mind” from an HR and legal compliance perspective.

In this e-guide, you’ll learn about the five biggest compliance risks related to managing remote workers, the laws that come into play with each one and, most important, what you can do to protect your business as well as your employees.

The employer risks covered are:

1. Violating Time & Pay Laws for Hourly Workers
2. Mismanaging Exempt Employees
3. Not Addressing Worker Safety at Home
4. Ignoring Security & Confidentiality Issues
5. Neglecting Posting Compliance Obligations

Risk #1: Violating Time & Pay Laws for Hourly Workers

Applicable Laws

The [Fair Labor Standards Act \(FLSA\)](#) also known as the federal “time and pay” law, ensures the proper compensation of employees, including setting a federal minimum wage and dictating rules for how overtime pay must be calculated. Where they exist, state and local time-and-pay laws can have an impact, as well.

Specifically ... under time-and-pay laws, non-exempt employees must be paid an hourly wage (at least the federal, state or local minimum, whichever is higher) for all hours worked. The FLSA also requires that non-exempt employees be paid at 1½ times their regular rate for all hours worked over 40 in a workweek. Some states have daily overtime laws for working over eight hours in a day.

Compliance Risks

Government fines and employee lawsuits can occur if employers don't follow proper timekeeping requirements, don't count all hours worked or permit overtime work without pay.

Recommended Actions

- Review and clarify work schedules and time-tracking procedures for hourly employees working remotely.
- Be clear about expected work hours, and use an electronic system for clocking in/out, if possible. Otherwise, require employees to submit signed timesheets weekly.
- Reinforce that non-exempt employees should not do any work ‘off the clock,’ including reading/responding to emails or phone calls, or working through breaks when clocked out.
- Remind workers and supervisors of any overtime restrictions and authorization procedures. Or, you may choose to implement a “no overtime, no exceptions” policy, either temporarily or permanently.

- Remember: Employers must pay for all hours worked — and comply with the overtime pay rules — even if an employee works those hours without approval. You can address policy violations through an employee discipline process, including terminating employees who repeatedly violate the policy, but you must always pay for every hour worked. Docking pay for unapproved hours is not permitted.

Risk #2: Mismanaging Exempt Employees

Applicable Laws

Again, the FLSA — and state and local time-and-pay laws, where they exist.

Specifically ... only certain employees (commonly called “salaried”) can qualify for an exemption from overtime pay rules. They must make at least \$684/week or \$35,568/year, and their job descriptions must pass a Department of Labor (DOL) “job duties” test based on the actual nature of their work (not just their titles). Most exempt employees fall into one of four categories: executive employees, administrative employees, professional employees and outside (or commissioned) salespeople.

Compliance Risks

FLSA violations and employee lawsuits can occur if you misclassify an employee as exempt, or if you destroy their exempt status by over-managing their work hours and essentially treating them as non-exempt employees.

Recommended Actions

- Verify that every salaried worker qualifies for one of the DOL’s defined exemptions. Beyond the salary requirement, the person’s actual job functions and responsibilities must meet FLSA criteria under the related “job duties” test.
- Because exempt employees are paid for their results, focus on their goals and deliverables and not their hours worked.

- Do not track work hours for pay purposes or establish a fixed work schedule unless necessitated by the role. (For example, it's okay to track hours for the purpose of billing customers, or require scheduled availability for employees who need to collaborate with team members or assist customers — but not to ensure the employee is working a certain number of hours per week.)
- Set expectations for when exempt employees must be available for meetings, collaboration and other work communication.
- Whenever possible, allow flexibility in work hours for exempt employees.
- Make sure an exempt employee's role does not shift to predominantly nonexempt duties. (And if it does, change the pay structure to hourly plus overtime.)
- Remember: Pay for exempt positions is based on the overall value the employee provides, not the number of hours worked. If you're not comfortable with that, understand that you always have the option to pay an hourly rate plus overtime, even if the position does qualify for exemption. Just be sure to use the same pay structure for all employees in similar positions.

Risk #3: Not Addressing Worker Safety at Home

Applicable Laws

Under the federal [Occupational Safety and Health Act \(OSHA\)](#), employers must ensure a safe and healthy work environment for employees and record any workplace injuries, even for remote workers.

Specifically ... OSHA will consider an injury “work-related” if it occurs while the employee is performing work for pay in the home and it’s directly related to that work (rather than the general home environment).

Also, remote employees are often covered under state workers’ compensation laws if the injury stems from employment conditions.

Compliance Risks

You may face hefty fines if you don't record work-related injuries that happen in the home (and that meet OSHA's recording criteria). There may be additional consequences if a remote employee gets hurt on the job and takes legal action.

Recommended Actions

- Encourage and assist remote workers in setting up an ergonomically sound workspace. For example, keyboards should be positioned slightly below elbow height, the top of monitors should be at eye level, and chairs should support good posture to avoid head, neck and eye strain.
- Consider supplying any special equipment that may be needed, such as monitor risers, ergonomic keyboards and even ergonomic office chairs for remote employees who don't already have them.
- Suggest that employees look away from their monitors periodically and take breaks from computer work throughout the day.
- Be mindful that you're responsible for any hazards caused by employer-provided materials or equipment used or stored in the employee's home, so check for their safety and reliability before issuing them.
- Stress the importance of employees immediately reporting any potentially work-related injuries or illnesses, including slips and falls, to their supervisors.
- Keep records of any work-related injuries suffered by remote workers, and update OSHA Form 300 logs.

Risk #4: Ignoring Security & Confidentiality Issues

Applicable Laws

In all 50 states and the District of Columbia, data breach laws require businesses to notify individuals, as well as state agencies, of any security system breaches leading to exposure of “personal information.” And, while not a law, the Payment Card Industry Data Security Standard (PCI DSS) requires all businesses that accept payment cards to follow specific protocols to protect credit card information at all stages of a transaction.

Also, the Health Insurance Portability and Accountability Act (HIPAA) requires healthcare organizations to keep the personal health information of their patients and clients safe.

Compliance Risks

Without proper precautions, your business runs the risk of dangerous and costly breaches of confidential and/or sensitive information. Employee negligence (such as human error or accidental loss of a device) is the main cause of breaches, with remote workers increasing that risk. Remote workers may also inadvertently disclose protected information, or make it easily accessible, to other individuals in the household.

Recommended Actions

- If possible, provide company equipment (such as computers and phones) for remote workers to use at home. Establish clear policies for how the equipment is to be used (including restricting personal use where warranted) and what to do if it malfunctions.
- If you do allow remote workers to use their own equipment at home, require that they install trusted security software and enable auto-lock features to protect the devices from viruses, malware and unauthorized access.
- Review and reinforce procedures that involve processing sensitive data, such as credit card numbers, tax identification numbers, financial data and personal health records where applicable. Make it clear that remote workers must take steps to prevent this information from being viewed by other household members.

- Keep firewalls up to date, and ensure the protection of proprietary information by enabling access to the company's network or intranet via virtual private network (VPN).
- Require remote workers to use a VPN, rather than public Wi-Fi, if they're working from coffee shops, libraries and other outside locations with personal devices.
- Set up multi-factor authentication for logging into company systems, and maximize password strength to help prevent security issues.
- Designate a contact person within the IT department to assist remote workers, as needed. And encourage employees to report any cyber lapses, such as clicking a questionable link or opening a suspicious attachment.

Risk #5: Neglecting Posting Compliance Obligations

Applicable Laws

The mandatory employee postings that employers are required to display for onsite employees under federal, state and local labor laws apply to remote workers, too. Employers must comply with all posting and notification laws even when employees do not report to a physical work location.

Specifically ... the Department of Labor (DOL) has affirmed that any employee who does not regularly visit a location where mandatory postings are displayed must be given an alternate way to view the postings. In these situations, the DOL states that electronic postings are an acceptable option.

Compliance Risks

Federal fines for posting violations can reach as high as \$43,000+ per violation, and state and local fines typically range from \$100 to \$1,000 each. The bigger risk, however, is related to employee lawsuits. Neglecting mandatory posting requirements can extend the statute of limitations and magnify the financial impact of employee lawsuits.

Recommended Actions

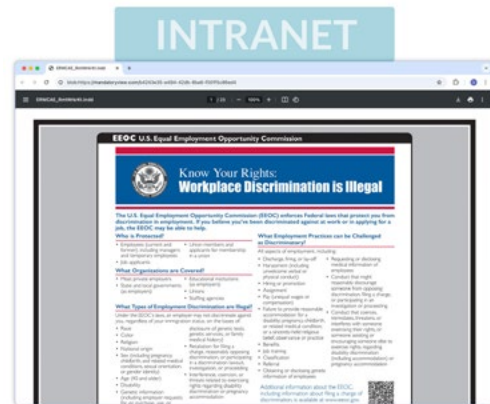
- Per DOL guidance, provide electronic postings for all employees who do not visit a physical work location at least three to four times per month. The DOL explicitly states that electronic delivery — such as via email distribution or intranet links — is an acceptable way to comply.
- Keep in mind that electronic postings are not an acceptable replacement for physical posters where feasible. If you have employees who regularly report to a work location, you are also required to keep the physical posters fully up-to-date at all times.
- Remember: Posting compliance is your first line of defense in any employee lawsuit or agency investigation.

While we make every effort to provide the most accurate, up-to-date information at the time of publication, employment laws are constantly changing, and this material is subject to change.

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