



Five Key Compliance Issues

A Practical Guide for Your Business



January 2023

Introduction

Compliance with federal, state, and local labor regulations remains one of the biggest challenges for businesses across industries. Laws are constantly changing and evolving, and they often vary from state to state, and even city to city. Employers and their HR and payroll teams face the difficult task of not only keeping up with these ever-shifting requirements, but also making sure that they are applied accurately.

The costs of noncompliance are steep for organizations. Fines, fees, and penalties can have a serious financial impact, not to mention the possibility of legal repercussions and reputational damage. These potential consequences make it even more important to have experts on staff and rigorous policies in place that prioritize ongoing compliance.



Keeping Your Business in Compliance

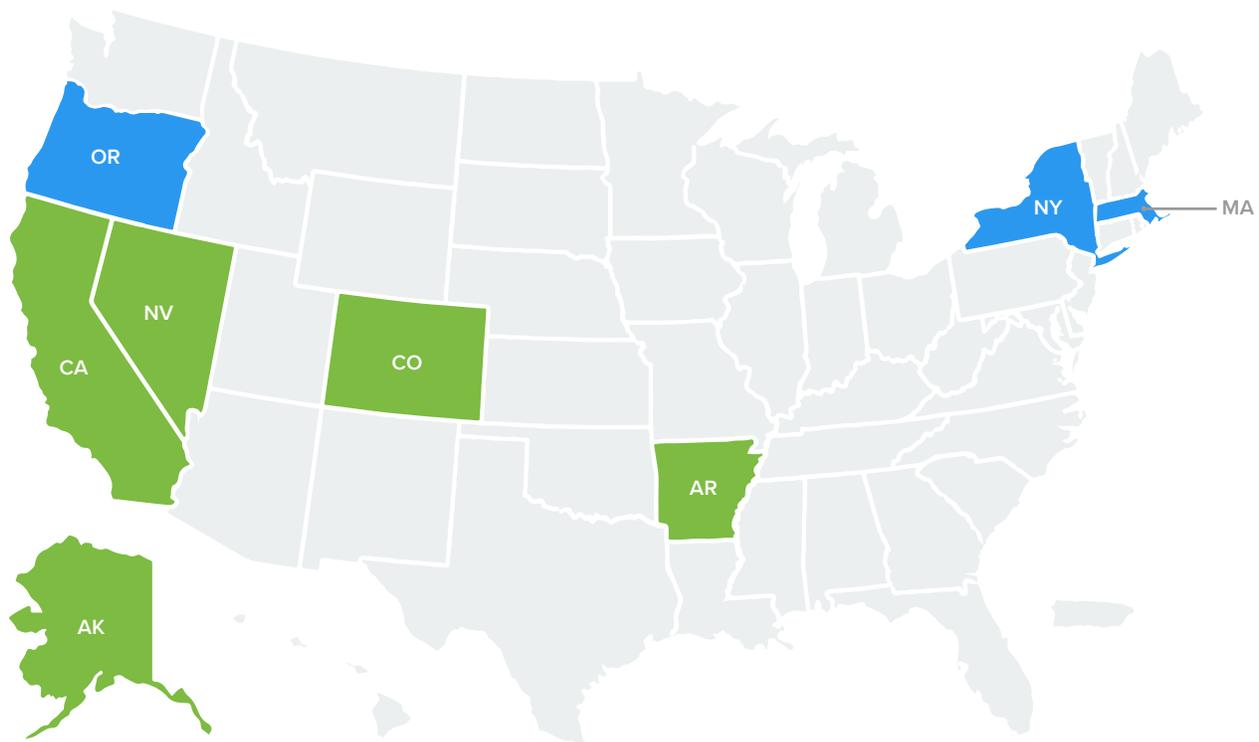
This practical guide is designed to help you comply by highlighting some of today's top labor issues, ranging from overtime and paid leave to newer developments, like predictive scheduling and biometric consent. Although the complexity of these issues can seem overwhelming, awareness and preparation are key to managing them successfully.

As we will see, when it comes to the current compliance landscape, traditional manual methods of HR and payroll may not be agile enough to keep up. Fortunately, human capital management technology and software offer automated solutions that can make a critical difference, helping employers administer and track pay, leave, scheduling, and more — all while giving employees greater access and transparency.

Overtime Pay

The Fair Labor Standards Act (FLSA) lays out the federal provisions for overtime pay — namely, that all nonexempt employees must receive overtime pay for any hours worked over 40 in a workweek, at a rate not less than time and one-half their regular rate of pay. This may seem straightforward enough, but it is often not that simple. While most states follow the FLSA rules (which, at minimum, they must), some states have enacted more employee-friendly regulations.

Massachusetts, New York, and Oregon, for example, have industry-specific overtime laws, and Arkansas, California, Colorado, and Nevada have daily overtime laws on the books. Things can get complicated for employers facing these kinds of exceptions. Nevertheless, pay rules must always be observed and administered to the letter; incorrect tracking and calculations — even if inadvertent — can result in violations and costly penalties.



 States with industry-specific overtime laws

 Federal provisions for overtime pay

 States with daily overtime laws

Labor-related laws are evolving and changing on an ongoing basis, at both the federal and the state levels; therefore, the information reflected in this map is intended only as a guideline, not as a final, accurate record.



Tackling Overtime With Technology

The power of technology provides numerous benefits for managing complex overtime regulations. Sophisticated time and attendance software enables employers to automate pay rules to help ensure that overtime is paid out accurately, removing the risk of manual mistakes. By integrating time tracking with payroll, such a system facilitates a smooth process.

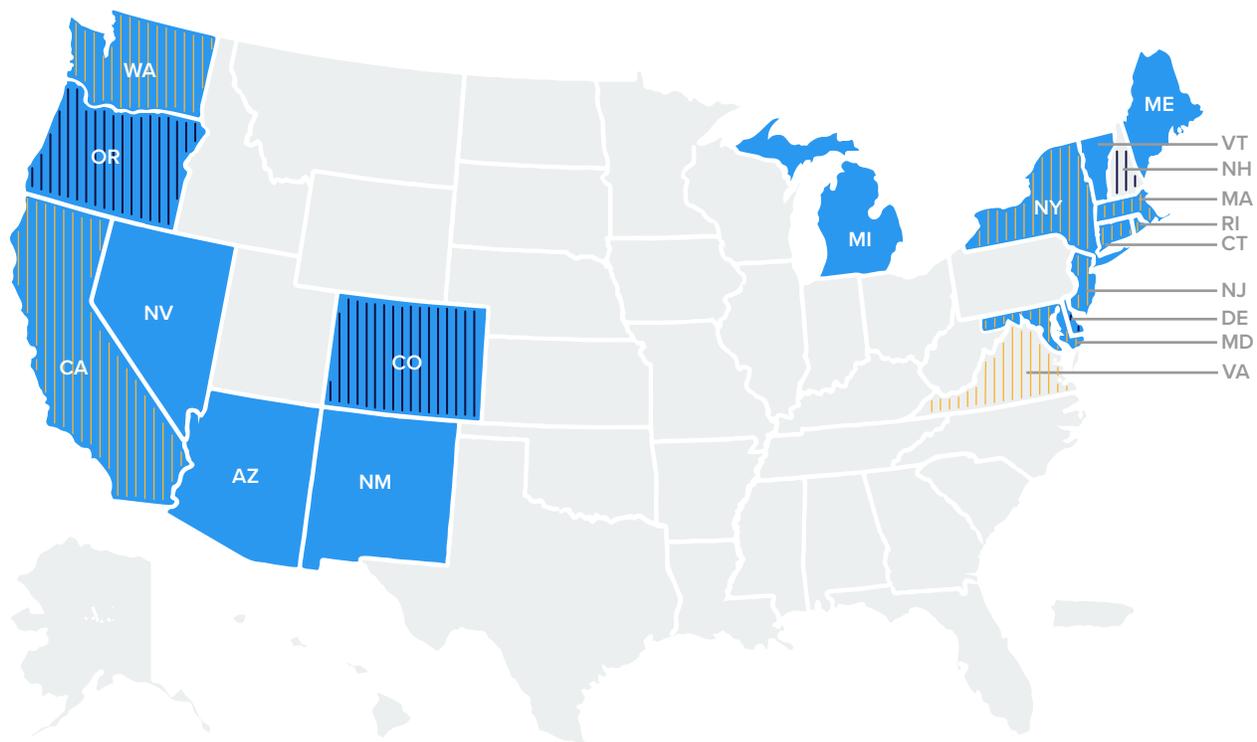
In addition, a technology-driven solution can help with workforce planning, shift scheduling, and saving on labor costs. Managers can receive automatic notifications when employees' hours are approaching overtime limits, allowing them to make strategic decisions that support your business's budget and needs. As a result, overtime is less likely to come as an unwelcome, expensive surprise.

Despite the challenges of overtime policies, having the right tools at your disposal can keep you on the right side of the law while also serving your organization's interests.

Paid Leave

Paid leave laws are growing and changing at a rapid pace across the nation. Pandemic-related paid sick leave and paid family leave legislation that was enacted by the federal government in 2020 — and has since expired — was also passed in various forms by many state and local jurisdictions. This trend of new state and local regulations covering paid sick time and family leave is expected to continue to accelerate into the future.

Keeping track of these laws' requirements — and how they overlap with one another — can be an arduous, confusing task even for the most seasoned of HR professionals. To stay ahead of the curve, employers must be proactive and prioritize the development and implementation of clear-cut paid-time-off policies that adhere to the applicable leave laws in their jurisdiction.



- States with PSL laws
- States with PFL laws passed but not yet active

States with active PFL laws/programs

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Streamlining Paid Leave Administration

As in the case of overtime pay, the most effective way to stay on top of quickly evolving paid leave laws is with a software-based time and attendance solution that links seamlessly with payroll. Without automation, tracking and calculating the correct leave amounts for every employee in accordance with complex state and local regulations is a daunting burden. In addition, the price of error is high.

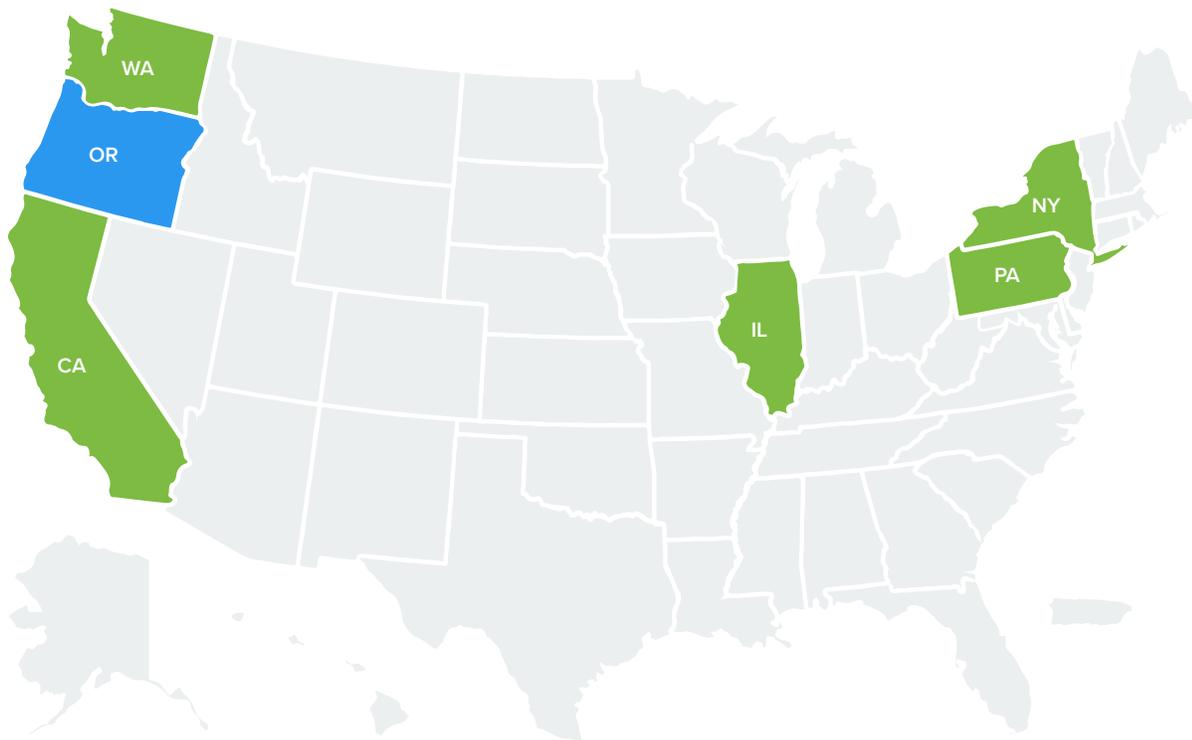
The benefits of technology do not stop there. Using an advanced solution, you can not only track leave, but also send relevant alerts and notifications, distribute appropriate action letters, and make modifications as laws and policies change. Employees enjoy easy access to their leave information as well. With a sound system in place to assist you in complying with the legislation in your locale, your workers will have the proper amount of leave to take.



Predictive Scheduling

Particularly within the food service, hospitality, and retail sectors, new so-called predictive scheduling laws are intended to give employees more predictable schedules that allow for a healthier work-life balance and improved financial security. However, on the employer side, this trend can present major challenges, requiring managers to anticipate customer demand and coverage needs far ahead of time.

For organizations that attempt to implement predictive scheduling manually, without the aid of technology and automation, miscalculations can easily occur, leading to overstaffing, understaffing, and other issues. Moreover, schedule changes that inevitably arise on short notice can cause conflicts for workers and may result in expensive fines for businesses.



- States with statewide predictive scheduling laws
- States with local predictive scheduling laws

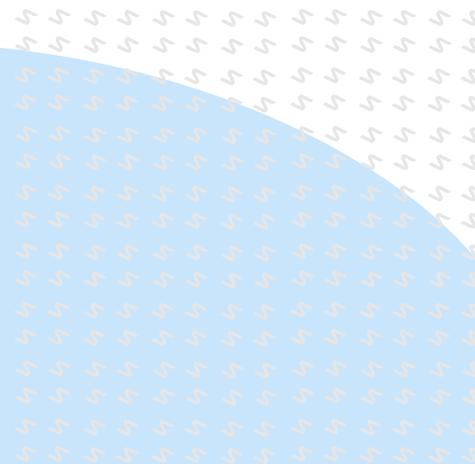
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Putting Predictive Scheduling Into Practice

The best way to prepare for predictive scheduling regulations is to plan ahead and make sure all your bases are covered.

Common predictive scheduling policies include posting schedules at least a week or two in advance, providing a written estimate of each employee's anticipated work schedule at the time of hire, offering additional hours to current part-time employees before hiring new employees, giving extra pay to employees if their schedule changes after it's posted, and ensuring an adequate rest period between shifts, among other practices.

Once again, to implement these policies more efficiently and accurately — and to make managers' lives much easier — a software-based scheduling solution can play a crucial role. An automated solution serves employees as well, giving them a clearer picture of their schedules and supporting their work-life balance — which brings the added benefit of reducing turnover and increasing retention.



Worker Classification

The classification of workers as either employees or independent contractors determines, among other things, how they are paid, what benefits they may be eligible for, and which tax forms are used to report their income.

In 2021, the U.S. Department of Labor rescinded the previous administration's employer-friendly rule regarding the classification of workers as independent contractors, and the agency has since proposed a new rule to take its place. This rule could expand the number of workers considered to be employees under the Fair Labor Standards Act.

Going forward, given the prospective changes on the horizon, it's vital that employers monitor all legislative developments and associated court challenges, including those involving the classification of app-based workers. Lawsuits and state ballot propositions on worker classification are anticipated as well.

Classifying Workers Correctly

Misclassifying employees as independent contractors, and vice versa, is a common but costly mistake — which is why closely following federal and state guidance is so critical to avoid violations.

Once workers are classified into the correct group, the next step is to ensure that they are being paid and taxed in the proper ways and receiving whatever benefits they are entitled to. Technology can help ease this administrative burden by allowing you to automate the management of full-time, part-time, and temporary employees, as well as freelancers, gig workers, and contingent workers. The desired result: consistency and transparency across the board.

If your organization hires individuals as both employees and independent contractors, it is especially important to differentiate between the two in accordance with the latest rules and regulations. Keep an eye out for forthcoming legislative mandates and how they impact your workforce.

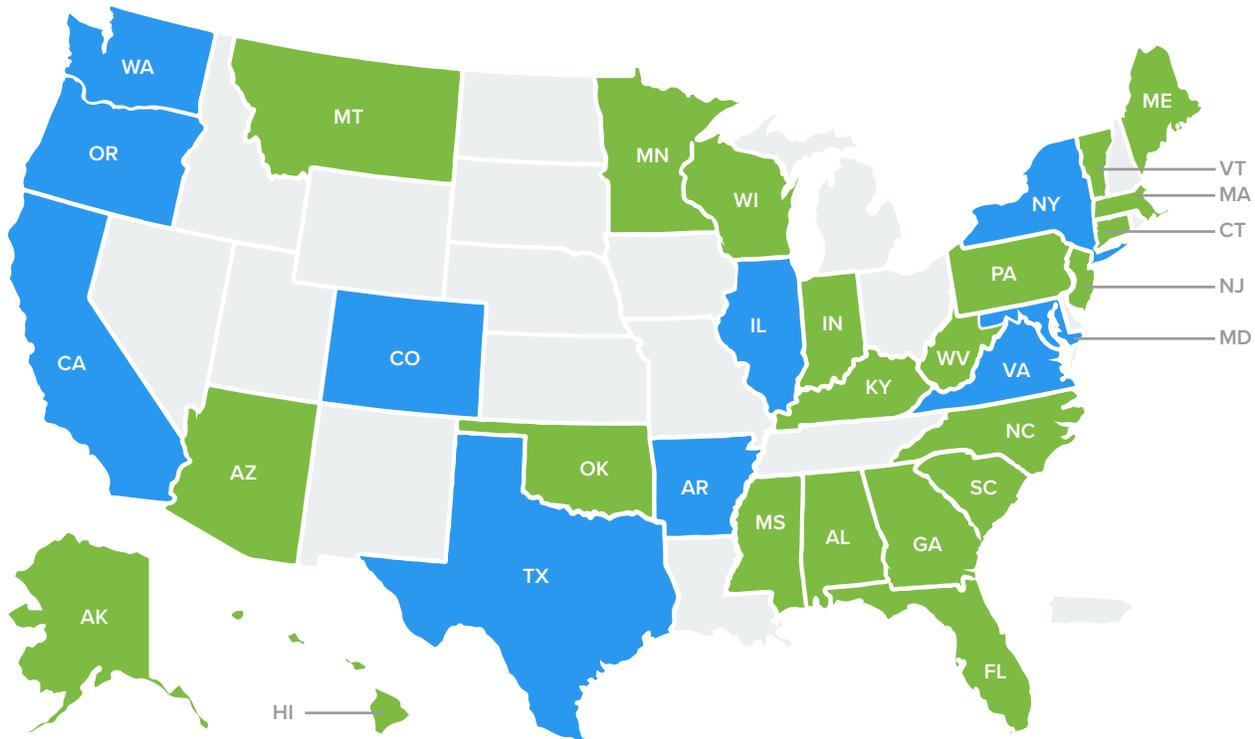


Biometrics

Biometrics uses data collected from physical characteristics (e.g., face, eyes, fingerprints, voice) to identify and authenticate individuals within the workplace, whether for access to facilities or IT systems, clocking in and out, or other purposes.

Several states have enacted laws to protect employees' privacy rights with regard to their biometric data — and running afoul of these laws can result in harsh penalties for employers. This new legislation typically requires the employee's informed consent, often in writing; prohibits discrimination based on an employee's biometric data; forbids the sale of this data; and lays out requirements for storage and deletion of the data.

The most well-known — and restrictive — state law addressing the use of biometrics in the workplace is Illinois' Biometric Information Privacy Act (BIPA). Since it was enacted in 2020, BIPA has led to over 400 class action lawsuits. Connecticut, Maryland, Texas, and Washington have also passed laws around biometrics, and California recently introduced a bill that would prohibit employers from collecting an individual's biometric data without written consent or a legitimate business purpose.



- States with existing biometric data laws
- States with proposed biometric data laws

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Managing the Risks

Your organization can proactively manage the risks of biometrics by codifying policies and practices that protect employees' privacy, toward compliance with applicable laws.

Such steps include introducing a written privacy policy that defines how data will be collected, stored, and used; obtaining written consent from employees, including authorization to share their biometric information with business partners; identifying any potential for discrimination and eliminating it; implementing and maintaining a consistent practice for securely storing the data, both internally and by any third party; and confirming that all processes for collecting, storing, using, and destroying biometric data are consistent with industry standards.

To reap the various benefits of biometrics — from efficiency to security — businesses must keep up with the fast-evolving legislation on this issue and take necessary measures to safeguard employees' rights.



Conclusion

From overtime pay and paid leave to predictive scheduling, worker classification, biometrics, and beyond, today's top compliance issues continue to evolve and grow in complexity. Adhering to federal, state, and local regulations can be a juggling act for employers and HR and payroll managers, who often feel as if they are playing a never-ending game of catch-up. Still, the responsibility to conform to these laws remains, and the costs of noncompliance can have a damaging effect on your business.

Awareness of legislative developments and their implications should be a foremost priority, along with having experts on your team who can interpret the rules and translate them into appropriate policies for your industry and your organization. The next challenge is to administer these policies accurately and effectively, which can be all but impossible when done manually. This is where the need for a technology-based solution arises — one that allows you to turn compliance into an automatic set of procedures.

Leveraging an Automated Solution

As discussed throughout this guide, the benefits of utilizing an automated solution for compliance cannot be overstated. Robust, flexible time and attendance software enables you to track and administer pay rules, leave, and worker classification with precision — and provides a scheduling tool that can make it far easier to meet predictive scheduling requirements. The risk of human error is drastically reduced, managers' workload is lessened, and employees have increased visibility into their status, pay, benefits, and schedules. It is a win-win for all.

Ultimately, while labor laws and regulations bring many challenges, they are not insurmountable ones. With a company-wide commitment to compliance, a proactive mindset, and the advantages of technology, you can stay in the clear and avoid the pitfalls of penalties and fines, while protecting the rights and interests of your employees.

The key is to take the right steps now to address any vulnerabilities and strengthen your business's compliance infrastructure — so it will stand you in good stead well into the future.

To learn more about how WorkSync can help support your organization's compliance needs, visit us today at worksync.com.

