

SAGE ABRA

**Avoiding Costly Fines:
A Guide To Current Compliance Mandates**



What every manager in small to medium-sized businesses needs to know.

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Your business in mind.

A GUIDE TO CURRENT COMPLIANCE MANDATES

What every manager in small to medium-sized businesses needs to know.

About Sage Abra HRMS

Sage Abra HRMS from Sage Software is the market leader in HR, payroll, benefits, and compliance solutions. Targeting the needs of small to mid-sized companies, the Sage Abra family of HRMS solutions provides a comprehensive and robust set of tools to streamline HR and payroll processes. Sage Abra consists of payroll, recruiting, training, benefits administration, and compliance solutions that provide a single, seamlessly-integrated database and powerful reporting tools to help businesses increase productivity and tackle challenging HR issues. The complementary line of products from Sage Abra allows companies to easily add functionality for attendance, organizational design and charting, employee self-service, and automated, internal employee communications.

About Sage Software

Sage Software offers leading business management products and services that give 2.3 million small and mid-sized customers in North America the insight for success throughout the life of their businesses. Its parent company, The Sage Group plc (London: SGE.L), supports 4.3 million customers worldwide. For more than 25 years, Sage Software has delivered easy-to-use, scalable, and customizable applications through its portfolio of leading brands, including Sage Pro ERP, ACT! by Sage, Sage Business Vision, Sage CPA Practice Manager, Sage FAS Fixed Assets, Sage MAS 90 ERP, Sage MAS 200 ERP, Sage MAS 500 ERP, Sage Nonprofit, Peachtree by Sage, Sage SalesLogix CRM, and Sage Timberline Office, among many others.

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Sarbanes-Oxley Act of 2002</p> <p>If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may suspend or bar such person from being associated with a registered public accounting firm. The Board may also require the registered public accounting firm to end such association, suspend, or revoke the registration of the public accounting firm, and invoke such other lesser sanctions as the Board considers appropriate.</p> <p>Title VIII: Corporate and Criminal Fraud Accountability</p> <p>Imposes criminal penalties for knowingly destroying, altering, concealing, or falsifying records with intent to obstruct or influence a Federal investigation or a matter in bankruptcy. It also imposes penalties of up to 10 years in prison for failure of an auditor to maintain for a five year period all audit or review work papers pertaining to an issuer of securities.</p> <p>Title IX: White Collar Crime Penalty Enhancements</p> <p>Establishes criminal liability for failure of corporate officers to certify financial reports, including maximum imprisonment of ten years for knowing that the periodic report does not comply with the act. Penalties include up to 20 years imprisonment for willfully certifying a statement knowing it does not comply with this act.</p> <p>Title XI: Corporate Fraud Accountability</p> <p>Amends Federal criminal law to establish a maximum 20 year prison term for tampering with a record or otherwise impeding an official proceeding.</p> <p>Authorizes the SEC to seek a temporary injunction to freeze extraordinary payments earmarked for designated persons or corporate staff under investigation for possible violations of Federal securities law.</p>	<p>Securities and Exchange Commission Public Company Accounting Oversight Board. This board was established to oversee the audit of public companies that are subject to the securities laws and other related matters. Its purpose is to protect the interests of investors and further the public interest by preparing informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for public investors. The Board shall be a body corporate, operate as a non-profit corporation, and have succession until dissolved by an Act of Congress.</p>	<p>Public Accounting Firms—all firms must register with the Public Company Accounting Oversight Board.</p> <p>Publicly Traded Companies.</p>	<p>Violations of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated in the same manner as a violation of the Securities Exchange Act of 1934 or the rules and regulations issued thereunder, consistent with the provisions of this Act. Any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations.</p> <p>Title VIII: Corporate and Criminal Fraud Accountability</p> <p>Impose a fine or up to 25 years of imprisonment any person who knowingly defrauds shareholders of publicly traded companies.</p> <p>Title IX: White Collar Crime Penalty Enhancements</p> <p>Increases the penalties for mail and wire fraud from 5 to 20 years in prison.</p> <p>Increases penalties for violations of the Employee Retirement Income Security Act (ERISA) of 1974, resulting in fines up to \$500,000 and 10 years in prison.</p> <p>Title XI: Corporate Fraud Accountability</p> <p>Increases penalties for violations of the Securities Exchange Act of 1934 to up to \$25 million dollars and up to 20 years in prison.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Sarbanes-Oxley Act of 2002-continued</p> <p>Authorizes the SEC to prohibit a violator of rules governing manipulative, deceptive devices, and fraudulent interstate transactions from serving as officer or director of a publicly traded corporation if the person's conduct demonstrates unfitness to serve.</p>			
<p>Americans with Disabilities Act of 1990 (ADA)—effective July 26, 1992</p>	<p>EEOC and / or the Department of Justice and/or the Office of Civil Rights, depending under which Title the complaint falls (Title I, Title II or Title III).</p> <p>Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.</p>	<p>Title I (Employment) requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.</p> <p>Title II (State and Local Government Activities) covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding.</p> <p>Title III (Public Accommodations) covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.</p>	<p>Remedies may include hiring, reinstatement, back pay, court orders to stop discrimination, and reasonable accommodation. Compensatory damages may be awarded for actual monetary losses and for future monetary losses, mental anguish, and inconvenience. Punitive damages may be available as well, if an employer acts with malice or reckless indifference. Attorney's fees may also be awarded.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Civil Rights Act of 1866 Section 1981</p> <hr/> <p>Employers are required to maintain records which reflect nondiscrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of individual's race.</p>	<p>Enforcement: No agency; direct court action.</p>	<p>All private employers are covered by the 1866 Act; there is no size of business requirement; nor is there any interstate commerce or affecting commerce requirement.</p>	<p>Section 1981 permits victims of race-based employment discrimination to obtain a jury trial at which both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages may be awarded. Such damages may include back pay and fringe benefits the employee would have earned during the period of discrimination from the date of termination (or failure to promote), to the date of trial. Compensatory damages are allowed for future loss, emotional distress, pain & suffering, inconvenience, mental anguish & loss of enjoyment of life. The caps placed on compensatory and punitive damages do not apply in a Section 1981 claim.</p>
<p>Equal Employment Opportunity Act of 1972</p> <hr/> <p>Employers are required to comply with EEOC reporting requirements and maintain records of recruitment activity to demonstrate compliance with equal employment opportunity rules. Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion, dismissal, or referral. Private employers with 100 or more employees or federal contractors with 50 or more employees and private contractors or subcontractors with contracts of \$50,000 or more must report annually using Form EEO-1. State and local government employers with 15 or more employees report biennially on Form EEO-4. The EEOC approved notice summarizing the pertinent provisions of Title VII of the Civil Rights Acts of 1964 as amended must be posted in an area accessible by employees.</p>	<p>Equal Employment Opportunity Commission</p>	<p>Employers who are subject to Title VII of the Civil Rights Act of 1964</p>	<p>Under most EEOC enforced laws, compensatory and also punitive damages may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against the federal, state, or local governments. The making of a false statement on the EEO-1 report is punishable by fine or imprisonment.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Civil Rights Act of 1991</p> <hr/> <p>Employers are required to maintain records which reflect nondiscrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of individual's race, color, religion, sex, or national origin. The EEOC approved notice summarizing the pertinent provisions of Title VII of the Civil Rights Act of 1964 as amended must be posted in an area accessible by employees.</p>	<p>Equal Employment Opportunity Commission</p>	<p>Private employers engaged in an industry affecting commerce with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year AND state and local governments which employ 15 or more employees or which receive revenue sharing funds.</p>	<p>Prior to the enactment of the Civil Rights Act of 1991, remedies under Title VII were limited largely to reinstatement, back pay, and the recovery of attorney's fees. Monetary recovery for emotional distress and punitive damages was unavailable. Under this act, victims of intentional employment discrimination may now recover compensatory and punitive damages ranging from \$50,000 to \$300,000 depending on size of employer, in addition to those damages already available under Title VII.</p>
<p>Fair Labor Standards Act of 1938 (FLSA)</p> <hr/> <p>Employers are required to comply with FLSA's record-keeping requirements of maintaining records of employment and earnings; order, shipping, and billing records; additions or deductions from wages; certificates of ages; wage rate tables; and work time schedules for two years. In addition, records which show employee's name, address, sex, and birth date; occupation and daily work schedule; individual contracts and bargaining agreements; sales and purchase records; regular hourly rate of pay for any week in which nonexempt person worked overtime; record of hours worked on a daily and weekly basis with total earnings due for nonexempt employees; and actual wages paid and deductions taken for three years. Employers are required to post a notice determined by the Wage-Hour Division in a conspicuous place at the worksite.</p>	<p>U.S. Department of Labor Employment Standards Administration, Wage and Hour Division</p>	<p>Enterprises with 2 or more covered employees and specified volume of sales must consider all employees covered. Annual sales test: \$500,000. Enterprises that were covered by the Law as of 3-31-90 but don't gross \$500,000 per year continue to be subject to the overtime pay, child labor, and record-keeping provisions of FLSA. The following enterprises are covered without regard to volume of sales: hospitals and related institutions and schools, profit or nonprofit; public agencies.</p>	<p>Court action against an employer can be filed by the employee or Secretary of Labor. Statute of limitations on enforcement for unpaid minimum wage, unpaid overtime compensation or liquidated damages is two years for non-willful action and three years for willful action. Civil penalties of up to \$11,000 can be assessed and/or imprisonment up to 6 months upon a second conviction. Injunctive and monetary relief for back pay and/or overtime may be assessed. Damage awards may be doubled when violations are willful.</p>
<p>Family and Medical Leave Act of 1993 (FMLA)</p> <hr/> <p>The Act requires that documentation be kept to track the employee's FMLA request, dates, disposition, etc. to support that no detrimental action was taken as a result of his/her FMLA request—including Form WH-380 Certification of the Health Care Provider and Form WH-381—Employer Response to Employee Request for Family or Medical Leave. A notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees.</p>	<p>U.S. Department of Labor Employment Standards Administration, Wage and Hour Division</p>	<p>Private employers engaged in commerce or in any industry affecting commerce who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year AND public agencies, including state, local, and federal employers and local education agencies (no minimum number of employees for private elementary or secondary schools).</p>	<p>Department of Labor has investigatory authority to review records annually or more often if there is reasonable cause to believe violations have occurred and resolve complaints by employees. The Secretary of Labor and also the employee have the right to sue. Penalties include monetary damages and equitable relief including employment, reinstatement, or promotion. Violations of record-keeping or posting requirements can result in a fine of \$100 per offense.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Occupational Safety and Health Act (OSHA)</p> <p>Employers must preserve the following records for five years: All recordable occupational injuries and illnesses no later than six working days after receiving information that injury or illness occurred, annual summary of occupational injuries and illnesses, and any accident causing death of one or more employees or hospitalization of five or more employees, which must be reported to the area director of OSHA within 48 hours. OSHA forms 300, 300A, and 301 are used to comply with the reporting requirements. Employers must post notices that advise employees of their rights, as well as each OSHA citation the company receives.</p>	<p>Occupational Safety and Health Administration</p>	<p>Employers engaged in interstate commerce. Employers with 10 or fewer employees and federal and state governments are exempt from certain requirements</p>	<p>Failure to maintain required records may result in a citation and civil penalties. Employers that willfully make false statements are subject to criminal penalties as well. If an investigation reveals unacceptable conditions, OSHA will issue a citation describing the violations and the proposed civil and/or criminal penalties. Citations may be contested before the Occupational Safety and Health Review Commission (OSHRC). An administrative law judge presides over OSHRC hearings. Awards for discrimination include reinstatement and back pay. An employer that violates the anti-discrimination provisions may be prohibited from committing future violations of these provisions and ordered to post a notice, provided by OSHA, which informs employees of its unlawful conduct. In addition, employers may be penalized with fines of up to \$1,000 per violation.</p>
<p>Consolidated Omnibus Budget Reconciliation Act (COBRA)</p> <p>The Department of Labor has issued a model statement that employers can use to comply with the act's notification requirements to employees.</p>	<p>U.S. Department of Labor and Internal Revenue Service</p>	<p>Group health plans maintained by employers with 20 or more employees in the prior year. It applies to plans in the private sector and those sponsored by state and local governments. The law does not apply to plans sponsored by the federal government and certain church-related organizations.</p>	<p>Companies that fail to comply with notification obligations may be fined up to \$220 per day until proper notification is given to employees. In addition, companies are liable for the costs of medical expenses incurred by an individual that would otherwise have been covered. "Good-faith compliance" is expected of employers. If employers do not comply, they will not be allowed to claim group health plan costs as a business expense, and they will therefore not be allowed to deduct it. Highly compensated employees—who are required to list employer contributions to their health plans on their tax forms—may also be penalized if their employers do not comply with COBRA.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Health Insurance Portability and Accountability Act of 1996 (HIPAA)</p> <p>Under the Health Insurance Portability and Accountability Act, group health plans and insurers are required to furnish a statement of prior health coverage, commonly referred to as a “certificate of coverage” to provide documentation of the individual’s prior creditable coverage. This certificate must be provided in the following circumstances: when an individual loses coverage under the plan; when an individual becomes entitled to elect COBRA continuation coverage, at a time no later than when notice is required under COBRA; within a reasonable period of time after the plan learns that COBRA continuation coverage has ceased or after the individual’s grace period for the payment of COBRA premiums ends; and upon request, before an individual loses coverage or within 24 months of losing coverage.</p>	<p>U.S. Department of Health and Human Services; Attorney General’s office at the state level</p>	<p>HIPAA provisions are imposed upon group health plans and issuers. Eligibility for an individual’s enrollment in a group health plan is determined according to the terms of the health plan and the rules of the issuer, but not according to an individual’s health status or that of an individual’s dependent. HIPAA guarantees access to health coverage for small employers. Small firms (50 or fewer employees) are guaranteed access to health insurance, and generally, no insurer can exclude a worker or family member from employer-sponsored coverage based on health status. Insurers are required to renew coverage to all groups, regardless of the health status of any member.</p>	<p>Except as provided in subsection (b) of the Act, the Secretary of Health and Human Services shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.</p>
<p>Title VII of the Civil rights Act of 1964</p> <p>Employers are required to keep all records for one year related to applications and hirings; promotions and transfers; layoffs and terminations; pay rates and other terms of compensation; and selections for training or apprenticeship programs that will reflect nondiscrimination based on race, color, religion, sex, or national origin. Two exceptions to Title VII relate to a bona fide occupational qualification or a bona fide seniority system. The EEOC approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees. The EEO-1 report is required by the amendment to this act; see next section.</p>	<p>Equal Employment Opportunity Commission</p>	<p>Private employers engaged in an industry affecting commerce with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year AND state and local governments which employ 15 or more employees or which receive revenue sharing funds.</p>	<p>Equitable remedies are provided, including injunctive relief, reinstatement, hiring, back pay, and front pay. Damages for intentional discrimination include consequential, compensatory, and punitive damages. Damages for non-monetary losses are capped between \$50,000 and \$300,000 depending on the employer’s size. Damages are not available for non-intentional discrimination. Compensatory and punitive damages for racial discrimination are precluded if such damages can be recovered under USC, Section 1981.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Equal Pay Act of 1963</p> <p>Employers are required to comply with FLSA's record-keeping requirements but must also maintain records which describe or explain the basis for payment of any wage differentials to employees of the opposite sex. Such records may include job evaluations, job descriptions, merit, incentive, or seniority systems and collective bargaining agreements. The EEOC approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees.</p>	<p>Equal Employment Opportunity Commission</p>	<p>Generally covers both private and public employers; there is no minimum number of employees established for coverage under the Act.</p>	<p>Enforced through civil lawsuits and jury trials. An individual's right to bring suit terminates when the EEOC commences an action to enforce the individual's rights. As provided by the Fair Labor Standards Act, civil penalties of up to \$11,000 can be assessed and/or imprisonment up to 6 months upon a second conviction. Injunctive and monetary relief, including reinstatement, promotion, and liability for lost wages may also be assessed. Damage awards may be doubled when violations are willful.</p>
<p>Age Discrimination in Employment Act of 1967 (ADEA)</p> <p>Employers are required to comply with FLSA's record-keeping requirements but also must maintain records which do not reflect age discrimination practices against persons 40 years and older. Such records may include privileges, compensation, terms, and conditions of employment. The Act does allow mandatory retirement of highly-compensated executives or top policy makers who have reached 65 years of age and who stand to receive at least \$44,000 annually in pension payments. The EEOC approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by applicants and employees.</p>	<p>Equal Employment Opportunity Commission</p>	<p>Employers with 20 or more workers are covered if they employed that many persons for each working day in each of at least 20 calendar weeks in the current or preceding calendar year, and they are engaged in an industry affecting commerce. State and local governments must comply with ADEA requirements. However, elected public officials and certain others are generally exempt. The law contains special provisions for federal employers.</p>	<p>Enforced through civil lawsuits and jury trials. An individual's right to bring suit terminates when the EEOC commences an action to enforce the individual's rights. Injunctive and monetary relief, including reinstatement, promotion and liability for lost wages, and front pay. Compensatory damage awards may be doubled when violations are willful. While states are covered under the terms of the Act, the U.S. Supreme Court held that state employees may not sue their employers for alleged violations under the Act. Separate procedures also exist for federal agency employees.</p>
<p>Consumer Credit Protection Act</p> <p>No separate reporting required; however records must be maintained which show garnishment of individual wages did not exceed 25% of the individual's weekly earnings or the amount by which his weekly earnings exceed 30 times the federal minimum hourly wages prescribed in the Fair Labor Standards Act of 1938, whichever is less. Exceptions to this rule exist for child support and debt due for any state or federal tax.</p>	<p>U.S. Department of Labor Employment Standards Administration, Wage and Hour Division</p>	<p>All employers, regardless of the size of the employer or the extent of employer's involvement in interstate commerce.</p>	<p>The Wage and Hour Division of the U.S. Department of Labor enforces the law. In states where an exemption for state-regulated garnishments has been granted, the state enforces the limitations on the amount that may be garnished in a pay period, but not the restrictions on discharge from employment. Anyone who willfully violates the discharge provision is subject to criminal prosecution and a maximum fine of \$1,000, imprisonment for up to one year, or both. Either an employee who has been illegally discharged or the U.S. Department of Labor may bring a court action asking for reinstatement to employment and restitution of lost wages.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Rehabilitation Act of 1973 (Section 503)</p> <p>No specific limitation appears in the statute or its implementing regulations. However, by virtue of the OFCCP's requirement that nonexempt federal contractors/subcontractors submit affirmative action data for compliance review audits, a two-year retention period is required for maintenance of AAPs and data supporting current and prior AAPs. Records of complaints under this section must be kept for one year. Employers must post a notice of equal employment opportunity requirements in a conspicuous place.</p>	<p>U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Programs</p>	<p>Public and private contractors and subcontractors holding contracts with the federal government worth \$10,000 or more. No minimum number of employees; however 50 employees plus a contract worth \$50,000 or more triggers a requirement for a written affirmative action plan to hire and advance qualified persons with disabilities.</p>	<p>Section 503 is enforced through administrative enforcement with resort to the courts through the Attorney General, in instances where denial of further contract work might be ineffective; there is no private right of action. Enforcement through sanctions can include the following: enforcing the contractual obligation through a court order; withholding payments that are due on the contract; terminating the contract altogether; and preventing the contractor from receiving any contracts in the future.</p>
<p>Vietnam Era Veterans Readjustment Assistance Act of 1974</p> <p>Records must be maintained which reflect nondiscrimination in personnel practices for all veterans that served in the U.S. military who are special disabled, Vietnam Era, recently separated veterans or who served during a war/campaign for which a campaign badge has been authorized and are specified veterans. Employers with government contracts or subcontracts of \$25,000 or more must file a Vets-100 report annually. A written affirmative action plan is also required for federal contractors and subcontractors if they have 50 employees and a contract worth \$50,000 or more. The EEOC approved notice summarizing the pertinent provisions of the law including how to file a complaint must be posted in an area accessible by applicants and employees.</p>	<p>U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Programs</p>	<p>Public and private contractors and subcontractors holding contracts with the federal government worth \$25,000 or more for the procurement of personal property and non-personal services (including construction). No minimum number of employees; however 50 employees plus a contract worth \$50,000 or more triggers a requirement for a written affirmative action plan.</p>	<p>Enforced through withholding of contract payments, termination of contracts, debarment from future contracts; make whole remedies, including reinstatement and back pay. Appropriated funds cannot be used for contracts with entities that do not meet the veterans' employment reporting requirements.</p>
<p>Executive Order 11246</p> <p>The EEOC approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees. The EO Survey is required to be filed annually for federal contractors or subcontractors which have 50 or more employees and a federal contract or subcontract worth \$50,000 or more.</p>	<p>U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Programs</p>	<p>Private employers and state/local governments who have federal contracts worth more than \$10,000; no minimum number of employees. Fifty employees plus a contract worth \$50,000 or more triggers a requirement for a written affirmative action plan.</p>	<p>General enforcement of systemic discrimination which requires contractors and subcontractors to refrain from employment discrimination on the basis of race, color, religion, sex, or national origin and to take affirmative action with regard to hiring and advancement of minorities and women. Individual complaints are referred to the EEOC. Violations may result in cancellation, suspension, or termination of contracts, withholding of progress payments, debarment, and sanctions.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Immigration Reform and Control Act of 1986</p> <p>Requires employers to obtain written certification from all new employees stating that they are authorized by law to be employed in the United States. The employer must also independently verify the employee's identity and employment eligibility within three days of hire. IRCA contains anti-discrimination provisions to protect noncitizens against unlawful discrimination; thus, an employer may not refuse to consider a person for employment just because it suspects the applicant is an unauthorized alien. An employer is required to verify an applicant's status only after an offer of employment is accepted. Every employee must complete Form I-9, which is issued by the Immigration and Naturalization Service, attesting to his or her legal status. IRCA requires an employer to keep proof of identity and authorization to work on file for three years following the first date of employment, or for one year following the termination of employment, whichever is later.</p>	<p>Department of Justice Immigration Naturalization Service</p>	<p>The Immigration Reform and Control Act made all U.S. employers responsible to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986.</p>	<p>Hiring and recruiting violations and improper referrals may result in: a cease-and-desist order; a fine ranging from \$100 to \$10,000, depending on the type and number of violations; and criminal penalties, which are also available under IRCA for certain violations.</p>
<p>Employee Retirement Income Security Act (ERISA)</p> <p>Employer must preserve for six years all records containing basic information and data that could be used to verify, explain, or clarify reports or descriptions required to be filed under ERISA. All plans covered by ERISA must file financial and actuarial reports (Form 5500) with the Treasury Department on a yearly basis.</p>	<p>Internal Revenue Service enforces vesting, participation, and funding requirements. The Department of Labor enforces the fiduciary requirements</p>	<p>All employers engaged in commerce with the exception of churches and federal, state, and local government employers.</p>	<p>Willful violations of ERISA can result in both criminal and civil penalties. Enforcement agencies have the right to: force plan fiduciaries to restore profits made through improper plan transactions, make good on losses, and pay civil fines; withdraw tax exemptions that such plans normally carry; and sanction employers with fines in amounts from \$5,000 to \$100,000 and prison terms of up to one year.</p>
<p>Federal Insurance Contributions Act (FICA)(ERISA)</p> <p>FICA records must be kept in a safe and convenient location for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. Quarterly reporting of wages and taxes on Form 941; annual reporting on Form 943 (for agricultural employer) to the IRS. Forms W2 and W3 submitted annually to SSA and employee. Taxes deposited based on employer's filing frequency.</p>	<p>Internal Revenue Service</p>	<p>For FICA purposes, all employers—defined as any entity that employs one or more employees—are covered.</p>	<p>Employers may be subject to both civil and criminal penalties for failing to meet employment tax obligations. These obligations include the timely filing of employment tax returns, paying the tax due and meeting deposit requirements. Penalties may be assessed for the late filing of employment tax returns, late payment of taxes shown on employment tax return, and federal interest assessed for underpayment of taxes. Additionally, criminal penalties may apply to willful failures to file, pay, or deposit employment taxes.</p>

CURRENT COMPLIANCE MANDATES

Legislation and Requirements	Enforcement Agency	Covered Employers	Violations
<p>Federal Unemployment Tax Act (FUTA)</p> <hr/> <p>FUTA records must be kept in a safe and convenient location for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. Annual reporting of taxes and wages on Form 940 or 940EZ to the IRS. Taxes deposited quarterly or annually based on the tax amount.</p>	<p>Internal Revenue Service</p>	<p>Employers with one or more employees who work at least some portion of a day in each of 20 weeks or pay wages of \$1500 during any calendar quarter. (Agricultural and domestic worker employers have different tests to determine liability.)</p>	<p>Employers may be subject to both civil and criminal penalties for failing to meet employment tax obligations. These obligations include the timely filing of employment tax returns, paying the tax due, and meeting deposit requirements. Penalties may be assessed for the late filing of employment tax returns, late payment of taxes shown on employment tax return, and federal interest assessed for underpayment of taxes. Additionally, criminal penalties may apply to willful failures to file, pay, or deposit employment taxes.</p>
<p>Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (New Hire Provision)</p> <hr/> <p>The law established a Federal Case Registry and National Directory of New Hires to track delinquent parents across state lines. It also requires that employers report all new hires to state agencies for transmittal of new hire information to the National Directory of New Hires. Each state may provide the time within which the required report shall be made with respect to an employee, but such report shall be made: not later than 20 days after the date the employer hires the employee; or in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.</p>	<p>U.S. Department of Health and Human Services, Office of Child Support Enforcement; New Hire Reporting Units at the state level</p>	<p>For new-hire reporting purposes, the term 'employer' is the same as for federal income tax purposes and includes any governmental agency or labor organization. For practical purposes, any entity that is responsible for providing a worker with a Form W-2 must meet the new-hire reporting requirements. The following exceptions exist: employers on Native American reservations and lands are not subject to the new-hire reporting requirements unless the tribe accepts the jurisdiction of the state for this purpose. An agency that simply places employees and is not responsible for paying the workers' salaries is not responsible for reporting the workers as new hires.</p>	<p>Civil money penalties assessed on non-complying employers as follows: the State shall have the option to set a State civil money penalty which shall be less than: \$25; or \$500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.</p>

CURRENT COMPLIANCE MANDATES - Notes



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