

# Sage HRMS



## Avoid costly fines: Ten compliance mandates you can't afford to ignore



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# Introduction

Managing employer compliance can be a tedious task, but it's a highly visible, important way that the human resources department minimizes risk for the business and keeps the workforce running smoothly. As an HR manager, it's up to you to ensure that all personnel business practices follow current employment law and that you are keeping proper records to document your company's compliance.

Mistakes in recordkeeping and compliance can earn your company punitive penalties and fines. Employee lawsuits can be quite costly. Of private companies surveyed by Chubb Insurance, 25% had experienced an employment law-related event (EEOC charge filed or employee lawsuit) in the past three years. The average cost of each employee lawsuit was \$70,267, and employees filed more than 99,000 complaints with the EEOC in the last reported year.<sup>1</sup>

Learn how to protect yourself and your organization from government scrutiny, noncompliance penalties, or expensive employee lawsuits. Sage created this guide to help you stay informed about employment laws, reporting rules, and developing workforce compliance issues that may impact your organization. We'll help you navigate ten crucial mandates, explaining the obligations and compliance considerations you need to be aware of in order to take on your responsibilities.

## 1. Affordable Care Act of 2010

The Patient Protection and Affordable Care Act (PPACA), signed into law by President Obama on March 23, 2010, and the amendments made by the Healthcare and Reconciliation Act of 2010 (together, the Healthcare Act), have significant employment tax and information reporting implications. Deadlines for some aspects of employer compliance have been delayed while other parts have already taken effect.

**Compliance summary:**

The ACA requires large employers to provide full-time employees with employer-sponsored health insurance or face large fines for noncompliance. This is known as the "employer mandate," and it has been a source of great concern and confusion for the business community. Implementation and enforcement of the employer mandate has been delayed twice already. Small employers (fewer than 50 full-time or full-time equivalent employees as calculated under ACA rules) are exempt from the employer mandate.

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<sup>1</sup> Chubb Insurance, "Worth the Risk? Highlights from the Chubb 2013 Private Company Risk Survey," 2013, p. 13.

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### Large employer status

To determine if your company has 50 or more full-time or full-time equivalent employees (FTEs), you'll need to perform some calculations. Full-time employees are defined as having 30 or more service hours per week, with respect to any month. Employees with 130 or more service hours per month are considered as full time. You'll need to review your records over a "look-back period" of between three to 12 months. The rules for what hours to count are slightly different for hourly and salaried employees.

**Hourly employees:** Count each hour for which an employee is paid, or is entitled to pay, for the performance of any duties for the employer and also each hour that employee is paid, or is entitled to pay, in which duties were not performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave.

**Salaried employees:** Count actual hours of service as with hourly employees. Alternately, if it does not cause a substantial understatement of hours worked, you may credit 8 hours for each day or 40 hours for each week the employee worked.

**How to calculate your total employee count:** For the applicable large employer status, full-time equivalent employees (FTEs) must also be counted. In these cases, employers calculate the number of FTEs they have, in addition to all full-time employees. This calculation is determined taking the total number of hours of service for the month of the employees who are not full time and dividing that number by 120.

Only a maximum of 120 hours per month are used in the calculation for this employee status.

Then add the number of full-time (average of at least 130 hours per month) employees with the number of FTEs. To get a total employee count, the full-time employees and FTEs for 12 calendar months are averaged.

### "Pay or play"

Some employers who are required to provide employee health coverage might instead opt to pay the fine for noncompliance if it is more cost effective to do so. Calculate your company's costs to pay or play and also consider the impact to employee satisfaction in order to guide the best decision for your company.

### Transitional relief rules

After two years of delays, large employers with 100 or more full-time employees or FTEs will come under the employer mandate in January 2015. To ease the burden of compliance with ACA, employers with fewer than 100 full-time employees (including full-time equivalents) in 2014 that meet certain conditions, no Employer Shared Responsibility payment under section 4980H(a) or (b), will apply for any calendar month during 2015. For employers with non-calendar-year health plans, this applies to any calendar month during the 2015 plan year, including months during the 2015 plan year that fall in 2016.

### W-2 reporting

Employers must now report the value of employer-sponsored health care benefits on their employees' W-2s. The amount listed on the W-2 should include both the portion paid by the employer and the portion paid by the employee. You don't have to issue a W-2 to retirees or former employees who would not otherwise receive a W-2 (no income to report).

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### IRS reporting requirements

If your business is considered an applicable large employer, you'll need to report some information to the IRS, starting with calendar year 2015. There are additional reporting requirements for employers with a self-insured health plan.

- For section 6056—Employer Reporting: Information about the employer offering coverage (including contact information and the number of full-time employees). For each full-time employee, information about the coverage (if any) offered to the employee, by month, including the lowest employee cost of self-only coverage offered.
- For section 6055—Insurers and other Coverage Providers: Information about the entity providing coverage, including contact information. Which individuals are enrolled in coverage, with identifying information and the months for which they were covered.

### ACA exchange notices

In 2014 and beyond, employers covered by the Fair Labor Standards Act are required to provide new hires with a written notice about the availability of government-run health insurance exchanges in compliance with the ACA. Download model notices created by the DOL for [employers who do not offer a healthcare plan](#) or those [with an employee plan](#).

### Enforcement agency:

Internal Revenue Service

### Helpful resources:

- IRS, [ACA for Employers](#)
- DOL, [Affordable Care Act](#) website
- PSA Insurance, "[How to Perform a Pay or Play Analysis in 8 Easy Steps.](#)"
- SHRM, "[Final Rules Implement ACA Employer Reporting Requirements,](#)" March 2014.

## 2. Fair Labor Standards Act of 1938 (FLSA)

FLSA regulates minimum wage, overtime pay, equal pay, and child labor. The current federal minimum wage is \$7.25 per hour, except for federal contractors who will be required to earn \$10.10 per hour, as soon as the Office of Management and Budget (OMB) implements a 2014 Presidential Executive Order. Be aware that 25 states have minimum wage laws that differ in amount from federal requirements.

Recently, a change to overtime rules has been proposed by President Barack Obama. Currently, there is a weekly wage floor of \$455 per week in FLSA. It doesn't matter if the employee is salaried or in a management role—employees earning less than \$455 dollars in a week must be paid for overtime worked. The President wants this wage floor increased dramatically—the exact amount has not been established—in order to benefit more workers who are considered "exempt" today.

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**Compliance summary:**

Employers must comply with FLSA's record-keeping requirements for 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, employers must keep 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.

**Enforcement agency:**

U.S. Department of Labor, Wage and Hour Division

**Helpful resources:**

- DOL Wage and Hour Division, [FLSA website](#)
- Seyfarth & Shaw, [Wage & Hour Litigation blog](#)
- National Conference of State Legislatures, [2014 State Minimum Wages](#)

## 3. Employee misclassification: Employee or contractor?

One of the first decisions that will be made as you source new talent is whether you are hiring an employee or an independent contractor. That's because you will need to withhold income tax, social security, and Medicare taxes from an employee's wages and pay the employer portion social security, Medicare, and unemployment (FUTA) taxes. Independent contractors pay their own income and self-employment taxes.

The misclassification of employees as independent contractors has become a big focus of enforcement. The federal government believes businesses misuse independent contractor status to avoid paying taxes and benefits. With soaring federal deficits, the administration has made closing the tax gap a top priority. The DOL has budgeted \$14 million in 2014 to investigate companies for worker misclassification, and the IRS has been conducting more 1099 audits. There are also several proposed pieces of legislation floating around Congressional committees with ideas about how to strengthen enforcement.

**Compliance summary:**

Test whether any of your independent contractors might really be employees and regularly revisit the issue. An employer exercises behavioral control and financial control over its employees, and the relationship between the parties is different than that of a client to a contractor. The IRS has identified key areas that can help you test. When classifying a worker, carefully consider these questions:

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- **Can the worker decide how, when, and where to complete work, what tools to use, and whom to hire?** The more extensive your instructions to the worker, the more likely he or she is an employee.
- **Is your company providing training?** If so, the employment status is more likely employee.
- **Does your company reimburse for expenses?** Lack of reimbursement leans toward independent contractor status.
- **Is there an opportunity for profit or loss on the part of the worker?** If yes, it probably indicates independent contractor status.
- **Does the worker have a significant investment in his or her own work?** If yes, it's likely a contractor relationship, although an exact dollar amount considered "significant" is as yet undetermined by IRS.
- **Do you provide the worker with benefits?** If yes, the worker is likely an employee.
- **Do you have a written contract?** A written contract can help establish the relationship both parties intended to have at the outset, but a contract cannot override misclassification.

From a reporting standpoint, employers must issue a W-2 summarizing annual wages for employees and deliver a 1099 to independent to independent contractors. Both documents are also filed with federal, state and local governments.

**Enforcement agency:**

Department of Labor and Internal Revenue Service

**Helpful resources:**

- IRS publication 1779, [Independent Contractor or Employee](#)
- Miami Dade College, "[IRS 20 Factor Test on Employment Status](#)"
- Pepper Hamilton, LLP, "[Client Alert: Congress Re-Introduces Independent Contractor Misclassification Law](#)," November 15, 2013

## 4. Employee misclassification: Exempt or nonexempt?

The FLSA categorizes employees into two types for purposes of determining who is covered by the FLSA. Exempt workers do not have to be paid overtime, and this class of worker is usually salaried with the authority to manage others. Lower-ranking employees typically earn an hourly wage and are considered nonexempt, meaning employers must pay them for overtime they work.

**Compliance summary:**

The weekly wage floor established by FLSA means that any employee earning less than \$23,660 per year is automatically nonexempt. Employees earning more than \$100,000 per year are almost always exempt. Managers and executives are usually exempt, as are many professions that require advanced education such as lawyers, doctors, dentists, teachers, architects, clergy, accountants, engineers, and scientists. If enacted, the new proposed overtime rules and higher wage floor will pull millions more workers into the nonexempt category.

**Enforcement agency:**

U.S. Department of Labor, Wage and Hour Division

**Helpful resources:**

- CPA Practice Advisor, "[Payroll: The Difference Between Exempt & Non-Exempt Employees](#)," January 2014

## 5. Repeal of the Defense of Marriage Act (DOMA)

The 1996 DOMA establishing the definition of marriage for federal purposes was between one man and one woman. For over a decade, it was an extremely controversial area of law. In 2011, President Barack Obama instructed the U.S. Department of Justice to stop defending DOMA in court, signaling a change in the government's attitude toward gay rights policy.

Then, in a landmark 2013 case, *United States v Windsor*, the U.S. Supreme Court struck down Section 3 of DOMA, effectively repealing the law and providing 1,100 federal protections to same-sex couples who marry. For employers, the repeal of DOMA has an impact on both payroll and benefits.

**Compliance summary:**

Employers must determine the marital status of all employees, including same-sex partners. For federal purposes, the terms "spouse" or "husband and wife" apply equally to heterosexual and homosexual marriages. Update your policies and the way that you describe qualified participants in your insurance and other benefits plans. Any benefit that your company has offered to employee spouses must now be extended to include same-sex spouses. Retirement plans should recognize same-sex spouses in terms of both survivor benefits and spousal consents. Payroll withholding should be adjusted to reflect marital status and dependents. COBRA coverage should be extended to same-sex spouses in applicable life events such as divorce or loss of a job.

**Enforcement agency:**

Internal Revenue Service

**Helpful resources:**

- IRS, "[Revised Rule 2013-17](#)," Guidance for Employers
  - SHRM, "[IRS Issues Guidance on Retirement Plans and Same-Sex Spouses](#)."
  - Ford & Harrison, LLP, "[Legal Alert: IRS Answers Some Outstanding Questions for Same Sex Spouses](#)," December 2013
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## 6. New hire reporting

When you hire a new employee, you need to make sure that the individual is eligible to work in the U.S. All employers must ensure that a Form I-9 is completed for each individual hired in the U.S., including both citizens and noncitizens. Additionally, employers can use the E-Verify system

### **Immigration Reform and Control Act of 1986 (IRCA)**

This law amends the Immigration and Nationality Act to prohibit U.S. employers from hiring illegal aliens. It also prohibits employment discrimination against individuals other than illegal aliens, based on citizenship status or national origin. Employers must verify the eligibility of each employee hired to work in the United States by completing Form I-9.

#### **Compliance summary:**

An employer must examine documents that establish the employee's identity and eligibility to work in the U.S. before completing the I-9. The list of acceptable documents can be found on the last page of the form. Both employees and employers (or authorized representatives of the employer) must complete the form. Employers must have a completed Form I-9 on file for each person on their payroll who is required to complete the form. You must store and retain Form I-9 either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. government officials from the Department of Homeland Security, Department of Labor, or Department of Justice.

#### **Enforcement agency:**

Department of Homeland Security U.S. Citizenship and Immigration Services

#### **Helpful resources:**

- U.S. Citizenship and Immigration Services, [E-Verify Tool](#)
- U.S. Citizenship and Immigration Services, [I-9 Forms & Instructions](#)

### **E-Verify**

You can use a free, electronic identification verification system to help ensure your new hire is eligible to work in the U.S. E-Verify is a voluntary verification system that has been adopted by over 500,000 businesses. First, have the new hire fill out an I-9 Form, then enter information into the E-Verify website and you will usually receive results in seconds. The results include a photo, if one is available in E-Verify, which will help you compare and ensure that the photo identification documents you are reviewing are genuine.

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## 7. Family Medical Leave Act of 1996 (FMLA)

If your company has more than 50 employees who work within a 75-mile radius of a worksite, you are subject to the requirements of the FMLA. The law protects an employee's right, in certain circumstances, to take medical leave to care for him or herself or a family member. According to the DOL, 13% of all employees surveyed took FMLA leave in the past 12 months.<sup>2</sup>

FMLA intersects with the American with Disabilities Act as Amended and workers' compensation laws in complicated ways and the combination is often referred to as the "Bermuda Triangle" of employee leave. You have to know how to keep the right records as well as grant and track leave properly, or your company could face compensatory or punitive damages.

### **Compliance summary:**

FMLA grants qualified employees up to 12 weeks of medical leave per year to care for themselves or qualified family members, without losing their jobs or group health benefits. The Act does not require employers to pay employees while on medical leave, but some do voluntarily. The Act requires that documentation be kept to track the employee's FMLA request, dates, disposition, and so on to support that no detrimental action was taken as a result of his/her FMLA request—including specific forms that are linked below. A notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees.

Several changes in employment law have had an impact on FMLA administration. Review and update your FMLA policies in light of these recent changes:

- In 2013, the FMLA was amended and forms were updated. The FMLA poster was revised; use the updated version at your worksite. Check your FMLA policies against the latest changes. Add Genetic Information Nondiscrimination Act (GINA) safe harbor language to any FMLA forms you utilize to request medical information.
- The repeal of DOMA provides leave rights for same-sex spouses to care for a spouse.
- When calculating full-time equivalent employees under the ACA, there are proposed rules for how to average any hours taken in unpaid FMLA leave (see link in Resources below).
- The DOL decided that an employer's obligations to maintain health insurance coverage for an employee on FMLA leave ceases if the employee is 30 days late paying the premium (or later depending on your corporate policy).
- In 2010, FMLA leave rights for the family members of veterans were expanded to include more situations and the forms were updated (links to new forms below).

### **Enforcement agency:**

U.S. Department of Labor, Wage and Hour Division

### **Helpful resources:**

- Department of Labor, [Final Rule for 2013 Amendments](#)
- Department of Labor, [Revised E-forms and Instructions](#)

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<sup>2</sup> U.S. Department of Labor, "[FMLA Leave Survey Fact Sheet](#)," 2013.

## 8. Other reporting requirements: OSHA/EEO/Vets

### Occupational Safety and Health Act (OSHA) Reporting

The Occupational Health and Safety Administration (OSHA) is a part of the U.S. Department of Labor and seeks to reduce workplace injuries and fatalities through enforcement of safety regulations. Failure to maintain adequate records and make proper reports to OSHA can result in civil penalties; willful and repeated violations can become grounds for criminal prosecution.

#### Compliance summary:

All employers must display the OSHA poster in a prominent location, report the work-related death or hospitalization of three or more employees, and in many cases, comply with additional OSHA recordkeeping requirements. The Act requires covered employers to prepare and maintain records of occupational injuries and illnesses. 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.

#### Enforcement agency:

Occupational Safety and Health Administration

### Antidiscrimination recordkeeping and reporting

Federal employment laws have been established to prohibit discriminatory practices against employees based upon their gender, race, religion, disability, and other attributes. This is a very active area of workplace litigation. To protect your company from employee discrimination complaints and lawsuits, it is essential to conduct regular training with managers and employees about workplace discrimination and harassment and to establish formal processes for dealing with complaints and keeping records.

### Equal Employment Opportunity Act of 1972

The Equal Employment Opportunity Act of 1972 prohibits employment discrimination on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital status. Employers are required to comply with EEOC reporting requirements and maintain records of recruitment activity to demonstrate compliance with equal employment opportunity rules.

**Compliance summary:**

Guidelines apply to employee selection procedures that 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.

**Enforcement agency:**

Equal Employment Opportunity Commission

**Title VII of the Civil Rights Act of 1964**

Title VII of the Civil Rights Act of 1964 is the landmark federal employment discrimination law. It prohibits discrimination in any aspect of employment on the basis of race, color, religion, national origin, or sex.

**Compliance summary:**

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 Civil Rights Acts of 1991.

**Enforcement agency:**

Equal Employment Opportunity Commission

**Civil Rights Act of 1991**

The Civil Rights Act of 1991 amended the Civil Rights Act of 1964 to strengthen and improve federal civil rights laws, provide for damages in cases of intentional employment discrimination, and clarify provisions regarding disparate impact actions. It provided for the right to trial by jury on discrimination claims and introduced the possibility of emotional distress damages, while limiting the amount that a jury could award.

**Compliance summary:**

Employers are required to maintain records which reflect nondiscrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of an 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.

**Enforcement agency:**

Equal Employment Opportunity Commission

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### Equal Pay Act of 1963

The Equal Pay Act of 1963 disallows wage discrimination based on gender for all jobs that require equal skill, effort, and responsibility under similar working conditions at the same employer.

#### Compliance summary:

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.

#### Enforcement agency:

Equal Employment Opportunity Commission

### Age Discrimination in Employment Act of 1967 (ADEA)

The Age Discrimination in Employment Act of 1967 prohibits employers from discriminating based on age in any aspect of employment against individuals who are 40 years old or older.

#### Compliance summary:

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.

#### Enforcement agency:

United States civil court system

### Americans with Disabilities Act of 1990 and 2008 (ADA/AA)

The Americans with Disabilities Act of 1990 is a civil rights law that 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.

#### Compliance summary:

First, determine if your company is a covered employer under the ADA:

- 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.
  - 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.
  - Title III (Public Accommodations) covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, and privately operated transportation and commercial facilities.
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Employers should be aware that the ADA was amended and greatly expanded in 2008. It now broadly defines an employee disability as:

- A physical or mental impairment that substantially affects one or more major life activities.
- A record of such impairment.
- Been regarded as having such impairment.

Employers must tread very carefully and should err on the side of assuming a covered disability in matters of potential ADA/AA discrimination.

### **Enforcement agency:**

EEOC and/or the Department of Justice and/or the Office of Civil Rights

### **Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA)**

Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibits federal contractors and subcontractors from discriminating in employment against protected veterans, and requires these employers to take affirmative action to recruit, hire, promote, and retain these veterans.

### **Compliance summary:**

Records must be maintained that reflect nondiscrimination in personnel practices for all veterans that served in the U.S. military who are disabled veterans, recently separated veterans (three years from date of discharge or release from active duty), Armed Forces Service Medal veterans, and other protected veterans. In accordance with Title 38, United States Code, Section 4212(d), the U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) collects and compiles data on the Federal Contractor Program Veterans' Employment Report (VETS-100 Report) from federal contractors and subcontractors who receive federal contracts that meet the threshold amount of \$100,000 on or after December 1, 2003.

A final rule issued in September 2013 updated the VEVRAA to require contractors to report additional information to state employment agencies and modified some of the contents required in employer Affirmative Action Plans. Additional information to report includes status as a federal contractor, contact information for the hiring official in each location in the state or in any outside search companies, and its request for priority referrals. The new regulations require that contractors establish annual hiring benchmarks for protected veterans. The new VEVRAA requirements went into effect March 24, 2014.

### **Enforcement agency:**

Department of Labor, Office of Federal Contract Compliance Programs

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## 9. Payroll garnishment

An employee's wages may be garnished for a number of reasons, including court judgments such as bankruptcy proceedings, child support and alimony, or delinquent federal or state taxes. Here are two laws to be familiar with as you work with garnishments.

### Consumer Credit Protection Act's Title 3 (CCPA)

This law protects employees from discharge by their employers because their wages have been garnished for any one debt and limits the amount of an employee's earnings that may be garnished in any one week.

#### Compliance summary:

Title 3 limits the amount of an employee's earnings that may be garnished and protects an employee from being fired if pay is garnished for only one debt. Specific restrictions apply to court orders for child support or alimony. The garnishment law allows up to 50 percent of a worker's disposable earnings to be garnished for these purposes if the worker is supporting another spouse or child, or up to 60 percent if the worker is not. An additional five percent may be garnished for support payments more than 12 weeks in arrears.

For matters other than child support or alimony, the CCPA limits the total amount that may be garnished in any workweek or pay period, compared to the employee's disposable earnings. For ordinary garnishments (those not for support, bankruptcy, or any state or federal tax), to the lesser of 25% of disposable earnings or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage (currently \$7.25 an hour).

#### Enforcement agency:

Department of Labor, Wage and Hour Division

### Personal Responsibility and Work Opportunity Reconciliation Act of 1996

There is a cooperative effort among states and with the federal government to help locate parents who are delinquent in child support obligations and garnish their wages. The new-hire provision in this law established a Federal Case Registry and National Directory of New Hires to track delinquent parents across state lines.

#### Compliance summary:

The law requires employers to 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 two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

#### Enforcement agencies:

U.S. Department of Health and Human Services, Office of Child Support Enforcement; New Hire Reporting units at the state level.

#### Helpful resources:

- Department of Labor, "[Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title 3 \(CCPA\)](#)"

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# 10. Employee Retirement Income Security Act of 1974 (ERISA)

ERISA is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. Although the ACA does not specifically amend or change ERISA, it is possible that your decisions regarding the employer mandate and “pay or play” might impact your employees’ retirement pensions. For example, if you decide to reduce employee hours in order to get underneath 50 FTEs and avoid the employer mandate, you might also run afoul of ERISA Section 510, which prohibits interference with an employee’s obtaining a rightfully vested pension. There is also some concern in the industry that medium-sized businesses forced to start providing health insurance under ACA may stop providing retirement benefits.

**Compliance summary:**

ERISA requires plans to provide participants with important information about plan features and funding, provides fiduciary responsibilities for those who manage and control plan assets, requires plans to establish a grievance and appeals process for participants to get benefits from their plans, and gives participants the right to sue for benefits and breaches of fiduciary duty. Employers 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.

**Enforcement agency:**

IRS and Department of Labor

**Helpful resources:**

- Department of Labor, [ERISA website](#)
- Jurist, “[ERISA & The Affordable Care Act: A Primer](#)”

## Conclusion

Sage is committed to supporting small and medium-sized companies by developing solutions that create greater freedom for them to succeed. For more than 30 years, we have been a leader in the development of Human Resource Management Systems (HRMS) software. Thousands of small and medium-sized businesses nationwide have implemented our popular Sage HRMS solutions. From those experiences, we’ve learned that compliance is one of the top challenges facing any human resources department.

For more information about our products and services, visit: [SageHRMS.com](http://SageHRMS.com)





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