



Webinar 1 - January 8, 2025

## **2025 Best Practices for Labor and Employment and HR Compliance**

### **WEBINAR OUTLINE**

#### **INTRO/SETTING THE STAGE**

- What is HR Compliance?
- Why is it Important?

#### **COMMON COMPLIANCE ISSUES**

- Anti-Discrimination Laws
- Employee Misclassification
- Wage and Hour
- Leave Laws
- Employee Benefits
- Health and Safety
- AI and Data Privacy Regulations

#### **HR COMPLIANCE BEST PRACTICES**

#### **UPDATES FOR 2025**

- Federal Law Updates
- New York State Updates
- New York City Updates

#### **HRtelligence TIPS**

## I. INTRO/SETTING THE STAGE

### A. What is HR Compliance?

- HR compliance refers to an organization's adherence to the laws, regulations, policies, and procedures that govern employment practices, the physical workplace, and the treatment of employees.
- This covers various areas, including hiring practices, employee classifications, compensation and benefits, workplace safety, discrimination and harassment policies, employee records management, and labor relations.

### B. Why is it Important?

#### **Risk mitigation**

Compliance reduces the risk of employment-related disputes such as discrimination claims, wage and hour violations, or wrongful termination cases, and helps protect the organization from potential liabilities and legal disputes.

Compliance with labor and employment laws and regulations helps organizations avoid legal penalties, fines, and lawsuits. Non-compliance can lead to costly legal battles, damage to reputation, and negative financial consequences.

#### **Employee well-being**

Compliance ensures that employees are treated fairly and equitably, promoting a positive work environment and bolstering retention. It includes maintaining non-discriminatory practices, providing safe working conditions, and upholding labor rights.

#### **Reputation and trust**

Organizations that prioritize HR compliance demonstrate their commitment to ethical and responsible business practices. This enhances their reputation among employees, customers, investors, and the public. It can attract and retain top talent and lead to improved performance and competitiveness.

## II. COMMON COMPLIANCE ISSUES

### A. Anti-discrimination laws

Failure to prevent or address workplace harassment or discrimination, based on protected characteristics, is a serious HR compliance issue and one that is unfortunately common.

Businesses must take into account anti-discrimination laws, such as:

- The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA), and;
- Title VII of the Civil Rights Act protects employees and job applicants from discrimination based on race, religion, color, sex, and national origin.

Under the ADA, for example, employers must provide reasonable accommodations to employees with disabilities so that they can benefit from the same employment opportunities as their non-disabled peers. There are three main categories of reasonable accommodation, including:

- Adjustments to the job application process
- Adjustments to the work environment or to the way the job is being done
- Adjustments to allow a disabled employee to enjoy equal employee benefits.

## **B. Employee Misclassification**

Misclassifying employees as independent contractors can lead to legal and financial repercussions. Misclassified employees may be deprived of benefits and protections they're entitled to, and the company could face fines and back taxes.

Ensure workers are correctly classified based on their job duties and relationship with the company.

## **C. Wage and Hour**

Failure to comply with wage and hour updates" means an employer is not adhering to recent changes in minimum wage, overtime pay, or other regulations related to employee compensation and working hours, potentially leading to legal repercussions as they are required to follow the latest updates under the Fair Labor Standards Act (FLSA) and New York State labor laws.

Potential violations:

This could include not paying the current minimum wage, failing to pay proper overtime for hours worked beyond standard workweeks, misclassifying employees to avoid overtime pay, or not properly recording employee work hours.

Consequences for employers:

If found in violation, employers may face civil penalties, including back pay owed to employees, liquidated damages, and fines depending on the severity and intent of the violation.

## D. Leave Laws

Failure to comply with leave entitlements such as the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA) are an easy misstep for employers to take and even more so now that so many states and municipalities have enacted their own leave entitlements.

New York has implemented enhanced leave laws now providing 20 hours of paid prenatal leave for all employees.

## E. Employee Benefits

Employee benefits such as health insurance and cafeteria plans have their own rules and regulations, such as COBRA notices and ERISA rules for certain healthcare coverages. Employers should be aware of these and stay up to date on changes.

## F. Health and safety

Employers must adhere to relevant health and safety laws and regulations. These laws cover OSHA rules, and incident reporting among other industry-specific regulations. They often outline requirements and standards that businesses need to meet to ensure safety in the workplace.

## G. AI and Data Privacy Regulations

Another frequent compliance concern for companies is inadequate protection of employee records, mishandling of sensitive employee data, or non-compliance with data privacy regulations.

New guidelines governing the use of AI in recruitment, monitoring, and decision-making processes, alongside stricter data privacy laws are expected in 2025. Employers should stress transparency in AI-driven decisions and secure handling of employee data.

## III. HR COMPLIANCE BEST PRACTICES

HR compliance requires a proactive approach to align with internal policies and external labor laws. Best practices for compliance include:

### **Conduct a compliance audit**

Regular audits identify and address gaps in HR policies and procedures. Review all HR processes, documentation, and employee records to verify compliance with applicable laws. This proactive step helps detect and rectify issues before they escalate.

### **Stay current with new regulations**

Federal, state, and local labor regulations frequently change. HR leaders must stay informed about these changes through trusted resources such as government websites, industry publications, and legal advisories. Regularly attend HR seminars, webinars, and training sessions to keep your knowledge current and promptly adjust policies.

### **Practice policy documentation**

Proper documentation of all HR policies and practices is crucial for compliance. Ensure that all employees have access to these documents and new hires receive comprehensive orientation on their rights and responsibilities. HR compliance services can keep your documentation thorough and up-to-date, reducing the risk of misunderstandings.

## **IV. RECENT UPDATES**

### **FEDERAL LAW UPDATES**

#### **New Overtime Rule Struck Down**

- The DOL's final rule "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees," which had authorized an increase in the white-collar minimum salary thresholds for exemption from federal overtime requirements has been struck down by a federal judge on November 15, 2024.
- The rule was set to dramatically boost the salary threshold for the "white collar" overtime exemptions.
- The rule increased the minimum salary to \$43,888 per year on July 1, 2024, and effective January 1, 2024, it would have increased the minimum salary to the equivalent of \$58,656 per year for the EAP exemption and \$151,164 per year for the HCE exemption.
- The exemption threshold is back to roughly \$35K.
- The DOL has recently appealed the federal judge's decision.

#### **NLRB Overrules Longstanding Precedent on Captive-Audience Meetings**

- In a recent decision, the National Labor Relations Board reversed a 76-year-old precedent and held that employers violate the National Labor Relations Act

when they compel employees to attend meetings where the employer expresses its views on unionization.

- The decision, which applies prospectively only, has significant implications for employers and unions engaged in organizing campaigns.

## NEW YORK STATE LEGAL UPDATES

### Wage and Hour (New York State and New York City)

#### Overtime Exemption Salary Threshold Increases

Effective January 1, 2025, New York's salary basis test for employees classified as exempt under the administrative and executive exemptions increased as follows:

New York City, Westchester, and Long Island	\$1,237.50/week or \$64,350.00/year (increased from \$1,200.00/week or \$62,400.00/year)
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Remainder of New York state	\$1,161.65/week or \$60,405.80/year (increased from 1,124.20/week or \$58,458.40/year)
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#### Minimum Wage Increases

Effective January 1, 2025, New York's minimum wage increased for employees (excluding home care aides and certain other industry employees) as follows:

New York City, Westchester, and Long Island	\$16.50/hour (increased from \$16.00/hour)
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Remainder of New York state	\$15.50/hour (increased from 15.00/hour)
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#### Upcoming Changes to the Tip Credit for Tipped Employees

As of January 1, 2025, the allowable "tip credit" for food service workers and service employees and the minimum cash wage increased.

##### *Tipped Food Service Workers*

A food service worker is defined as any employee who is primarily engaged in the serving of food or beverages to guests, patrons, or customers in the hospitality industry, including but not limited to wait staff, bartenders, captains, and bussing personnel, and who regularly receives tips from such guests, patrons, or customers. The term food service worker does not include delivery workers.

This chart reflects cash wages and tip credits for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island \$11.00 cash wage and \$5.50 tip credit/hour (increased from \$10.65 cash wage and \$5.35 tip credit/hour)

Remainder of New York state \$10.35 cash wage and \$5.15 tip credit/hour (increased from \$10.00 cash wage and \$5.00 tip credit/hour)

### *Tipped Service Employees*

A service employee is defined as an employee, other than a food service worker or fast food employee, who customarily receives tips.

This chart reflects cash wage and tip credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island \$13.75 cash wage and \$2.75 tip credit/hour (increased from \$13.35 cash wage and \$2.65 tip credit/hour)

Remainder of New York state \$12.90 cash wage and \$2.60 tip credit/hour (increased from \$12.50 cash wage and \$2.50 tip credit/hour)

### *Upcoming Changes to the Meal Credit*

The allowable "meal credit" for food service workers, service employees, and non-service employees increased on January 1, 2025. It is important to note that employees covered by the Minimum Wage Order for Farm Workers will not experience a change in the meal credit.

### *Food Service Workers*

This chart reflects the meal credit for food service workers, effective January 1, 2025:

New York City, Westchester, and Long Island \$3.95/meal (increased from \$3.85/meal)

Remainder of New York state \$3.95/meal (increased from \$3.80/meal)

### *Service Employees*

This chart reflects the meal credit for service employees, effective January 1, 2025:

New York City, Westchester, and Long Island \$4.60/meal (increased from \$4.45/meal)

Remainder of New York state	\$4.25/meal (increased from \$4.10/meal)
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*Non-Service Employees*

A non-service employee is defined as any employee other than a service employee or a food service worker.

This chart reflects the meal credit for non-service employees, effective January 1, 2025:

New York City, Westchester, and Long Island	\$5.65/meal (increased from \$5.50/meal)
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Remainder of New York state	\$5.35/meal (increased from \$5.20/meal)
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Updates to the Uniform Allowance

The required "uniform allowance" for employers who require employees to wear a uniform but do not launder and maintain the uniform itself increased on January 1, 2025. A "required uniform" is defined as clothing required to be worn while working at the request of an employer, or to comply with any federal, state, city, or local law, rule, or regulation, except clothing that may be worn as part of an employee's ordinary wardrobe. It is important to note that employees covered by the Minimum Wage Order for Farm Workers and employees of certain non profit organizations are not required to pay a uniform maintenance allowance.

This chart reflects the required uniform maintenance allowance, effective January 1, 2025:

	Workweek of More Than 30 Hours	Workweek Between 20-30 Hours	Workweek of 20 Hours or Less
New York City, Westchester, and Long Island	\$20.50/week (increased from \$19.90/week)	\$16.25/week (increased from \$15.75/week)	\$9.80/week (increased from \$9.50/week)
Remainder of New York state	\$19.25/week (increased from \$18.65/week)	\$15.30/week (increased from \$14.80/week)	\$9.25/week (increased from \$8.95/week)

**New York Paid Family Leave**



Starting January 1, 2025, the following changes will take effect:

- Eligible employees taking leave under the NYPFLL will continue to receive 67% of their average weekly wage, up to a cap of 67% of the current Statewide Average Weekly Wage (NYSAWW). For 2025, the NYSAWW is \$1,757.19, which means that the maximum weekly benefit for 2025 is \$1,177.32 (a \$26.16 increase from 2024).
- Eligible employees will contribute 0.388% of their gross wages per pay period, with the maximum annual contribution for 2025 set at \$354.53. Employees earning less than the current NYSAWW of \$1,757.19 will contribute less than the annual cap of \$354.53, consistent with their actual wages.

### **New York Paid Prenatal Leave**

- On January 1, 2025, an amendment to New York Labor Law section 196-b, the state's paid sick leave law, went into effect. The amendment requires New York employers to provide employees with 20 hours of paid prenatal leave during any 52-week period.
- The amendment provides that paid prenatal leave may be taken for "health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy."
- Employees may take paid prenatal leave in hourly increments at their regular rate of pay or the applicable minimum wage, whichever is greater. Paid prenatal leave is in addition to existing leave entitlements such as paid sick and safe leave, paid family leave, and leave under the Family and Medical Leave Act.

### **Paid lactation breaks**

- Starting June 19, 2024, New York employers must provide nursing employees with 30-minute paid lactation breaks.

### **COVID-19 sick leave law**

- This law will expire on July 31, 2025.

### **New York State Freelance Isn't Free Act**

The New York State Freelance Isn't Free Act, which provides new protections for freelance workers throughout the state took effect on August 28, 2024. The law sets forth certain requirements for employers when retaining the services of a freelance worker.

#### Definition of "Freelance Worker"

Pursuant to the Act, a “freelance worker” is defined as “any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services” in exchange for compensation.

### Written Agreement Requirement

Under the new law, when a business retains the services of a freelance worker the terms of the agreement must be memorialized in a written contract if (i) the cost of a single project is equal to or exceeds \$800, or (ii) the freelance worker has provided multiple services to the business within a 120-day period that equals or exceeds \$800 in the aggregate. Hiring parties will be required to “furnish a copy of such written contract, either physically or electronically, to the freelance worker,” and each party must retain a copy of the written contract. The contract must be provided to the freelance worker and retained by the hiring party for at least six years. The contract must include:

1. The names and mailing addresses of the freelance worker and the hiring party
2. An itemized accounting of the services to be performed
3. The rate of pay
4. The payment date
5. The date by which the freelancer worker must submit to the hiring party a list of services rendered under the contract to enable the hiring party to meet any internal processing deadlines to ensure timely payment.

### Timely Payment

Further, the new law requires that freelance workers must be compensated either: 1) whenever such compensation is due under the terms of the contract; or (2) no later than thirty days after the completion of the freelance worker’s services if the contract does not provide a specific date or specify the mechanism by which the payment date will be determined.

### **New York Retail Worker Safety Act Signed into Law**

On September 4, 2024, Governor Hochul signed into law the New York Retail Worker Safety Act which will impose significant workplace violence prevention requirements on retail employers. Most of the law’s provisions will take effect on March 1, 2025.

Specifically, under the new law, retail employers with ten or more employees will be required to adopt a workplace violence prevention plan which must include:

- (1) a list of factors or situations that may place retail employees at risk of workplace violence;
- (2) methods to prevent incidents of workplace violence;

- (3) information on legal provisions regarding violence against retail employees and remedies for victims; and
- (4) an anti-retaliation statement.

In addition, covered employers must provide the interactive training to employees.

## **NEW YORK CITY LEGAL UPDATES**

### **New York City Enacts Legislation Requiring Notice and Posting of Workers' Bill of Rights**

Beginning July 1, 2024, New York City employers were required to post and distribute a Workers' Bill of Rights which would contain information on the rights and protections under federal, state, and local laws that apply to all workers in the City, regardless of immigration status.

### **New York City Amends Earned Safe and Sick Time Act to Allow a Private Right of Action**

The New York City Council recently amended the New York City Earned Safe and Sick Time Act ("ESSTA"), to create a private right of action for employees claiming violations of ESSTA. Employees will have two years from the date they first knew or should have known about the alleged violation to file a lawsuit. The new law became effective March 20, 2024.

Previously, employees alleging violations of the ESSTA could only seek administrative action by filing a complaint with the Department of Consumer and Worker Protection ("DCWP"). The new law amends Section 20-924 of the administrative code of the city of New York to allow any person to "commence a civil action in any court of competent jurisdiction" alleging a violation of the ESSTA "within 2 years of the date the person knew or should have known of the alleged violation," and the filing of a complaint with the DCWP will be "neither a prerequisite nor a bar to bringing a civil action."

### **NYC Prohibits Provisions in Employment Agreements that Shorten the Time Employees Can Bring Discrimination Claims**

Effective May 11, 2024, the New York City Human Rights Law ("NYCHRL") was amended to prohibit any term of an employment agreement that shortens the time for employees to file a claim of unlawful discriminatory practices, harassment, or violence under the NYCHRL.



Between emerging trends and ever-changing laws/regulations, it's essential for an employer to be flexible and adaptable in order to navigate unexpected challenges. Developing the proper HR policies and strategies for implementing the updates and changes is key for legal compliance.

Employers should take the following steps to meet their current obligations and prepare for the laws:

- Identify required policies based on size and location of business, classification of workers and industry.

- Update Employee Handbook yearly to incorporate recent updates.
- Be consistent in policy application

You can achieve consistency by outlining process steps in writing, keeping proper documentation, and educating managers on how these processes work.

- Stay up-to-date with legal changes

Keep up-to-date with changes in local laws and regulations that apply to your company and new rules and regulations that come into effect.

- Develop an HR compliance checklist

Using an HR compliance checklist helps ensure you don't forget anything and complete the necessary actions promptly. You can create multiple checklists for various HR processes and different geographical locations.

- Train managers and HR on compliance

Provide them with regular training on anti-discrimination laws, anti-harassment policies, and diversity practices, as well as updates on changes in laws and regulations to help mitigate risks.