

2025 Legal HR Compliance for Health Care Providers

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Why Healthcare Employers Need To Be Concerned About Employment Practices And Procedures

- Effective hiring, employee management and issue spotting lead to greater productivity and effective prevention of employment practices liability
- Implementing legally compliant policies in a consistent manner leads to reduction of employee complaints and lawsuits
- Effective practices lead to reduction of legal costs and enhancement of your bottom line



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THE STATUTES

What Laws Do You Have to Be Worried About?

**ISSUE SPOTTING
IS THE KEY**

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Relevant Federal Laws in the Workplace

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HIPAA Policies/Training

- Covered Entities
- Business Associates
- Protected Health Information
- Implement Policies and Procedures
- Training of all Workforce on Privacy Rule and Security Rule

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Relevant Federal Laws in the Workplace

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Title VII of the Civil Rights Act of 1964 (Title VII)

- Race, color, religion, sex (including pregnancy), national origin
- *sexual orientation, gender identity*

Age Discrimination in Employment Act (ADEA)

- 40 and older

Americans with Disabilities Act (ADA)

- Disabled, regarded as disabled, record of disability

Genetic Information Nondiscrimination Act (GINA)

- Genetic information

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Relevant Federal Laws in the Workplace

Uniformed Services Employment and Reemployment Rights Act (USERRA)

- Military service

Equal Pay Act (EPA)

- Sex (payment of wages for substantially similar work)

Immigration Reform and Control Act (IRCA)

- Citizenship, national origin (I-9 employment eligibility verification process)

Pregnant Workers Fairness Act (PWFA)

- Reasonable accommodations for pregnant workers

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Ensure Compliance with Anti-discrimination laws for applicants and employees

Subjecting an employee to different terms and conditions of employment because of the employee's protected status

i.e. compensation, promotion, discipline, suspension, termination, benefits, etc.

Discrimination issues can occur at any stage of employment

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Types of Discrimination

Disparate Impact: Neutral policy with disproportionate impact on applicants or employees in protected category

Facial Discrimination: Employer's policy is intended to discriminate against a particular protected class

Pretext: Where a company does not admit to discrimination, but argues some other legitimate reason is the basis for its adverse actions against employee. (Most common issue in discrimination cases)

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Snapshot of Employment Law Enforcement Stats Today

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Government Agencies Reported Increased Complainant Reporting and Costly Settlements

- EEOC received **9,300+ complaints of discrimination in FY2024** alone
 - In 2024, the EEOC settled with multiple clients for **\$1M+ in damages** for alleged violations of Title VII, the ADA and ADEA. Many more settlements for damages in the **six figure range**.
- NY State Division of Human Rights secured about **\$6.7M in damages to more than 1,000 complainants** in 2023
 - The state reported that this was the highest compensation awarded to complainants in the past 6 years
- IL Department of Human Rights filed more than **2,500 charges during FY 2024**, and secured \$3.1M+ in settlement awards related to discrimination claims
- CA Civil Rights Department received approximately **20,000** complaints of discrimination in 2023
 - Including finalizing a **\$100M settlement** related to a class action lawsuit alleging violations of equal pay laws and sexual harassment in the workplaces

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Government Recovery for Wage and Hour Violations

- According to the Economic Policy Institute, the government recovered **more than \$1.5 billion in unpaid wages for workers between 2021 and 2023**
 - **See** <https://www.epi.org/publication/wage-theft-2021-23/>
 - In 2024, the federal DOL recovered **\$38M+ for workers in health care**
 - This figure does not include damages for wage and hour violations related to individual and class action litigation
- Mass. Attorney General Fair Labor Division processed **more than 930 complaints of wage and hour violations against employers in the healthcare industry in 2023-2024**
- NY DOL ordered that more than **\$63M in unpaid wages be returned to 65,000 workers** across NY state between 2022-2024

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Litigation Avoidance Starts with the Offer of Employment

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Offer Letter

Prepare an offer letter (or Employment Agreement) for all new hires.

Introduction

- Position, Title, Start Date, Full or Part-time Status
 - Work schedule and weekly hours
- Salary/hourly rate
- **At-will employment status**
 - Disclaimer to alter or rescinding information during course of employment
 - Avoid using phrases such as job security or in the future

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Offer Letter

Terms of Employment

- Subject to:
 - Successful completion of background checks, drug testing, signing of confidentiality agreements, Form I-9, and reference checks
 - Supersedes any prior oral discussions

Benefits Information/Eligibility Requirements

- PTO
- Health Insurance
- 401(k) plans
- Education Assistance

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Employment Agreement for Providers

- Compensation
- Fringe Benefits
- Malpractice Insurance
- Outside Activities
- Non-Compete/Non-Solicit/Confidentiality
- Term/Termination

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Malpractice Insurance

- Occurrence Coverage vs. Claims Made Coverage
- Tails and Noses
- Self-Insurance
- Scope of coverage

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Restrictive Covenants

- Non-compete requires state by state analysis
 - Scope and substance of non-compete must be appropriately tailored for each employee
- Generally, different rules for non-solicitation restriction
- Confidentiality
- Non-Disparagement

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Common Employment Issues

Part 1- Compensation

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Hypo #1

Riley, an experienced and trusted nurse, normally works full-time Monday through Friday. Last week, she also picked up a shift on Saturday to cover for another nurse who suddenly called out sick.

Riley is paid a salary and offered to work the extra shift, although she was not required to do so.

A few weeks later, Riley asks if she should have been paid overtime when she picked up this Saturday shift.

Is Riley entitled to overtime pay?

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Hypo #2

One of your physician assistants splits her time between her regular PA duties, and also providing administrative support to the practice, including scheduling and billing duties.

Some weeks she spends more time in her PA role, and other weeks she catches up on her administrative duties. The employee is paid the same daily rate for all work performed, and her paycheck is usually the same because her work schedule stays pretty consistent.

This month your practice serviced more patients than usual and you realize that the PA worked an average of 45 hours per week instead of her usual 40-hour schedule.

Is the PA entitled to overtime here?

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Key Areas for FLSA Compliance- Overtime

General Overtime Rule:

- All non-exempt employees working more than 40 hours per workweek must be paid 1.5x their regular pay rate for every hour worked over 40.
- Workweek = 7 consecutive, 24-hour days
- Ex. Employee making \$20/hour works 50 hours in a week. The employee would be compensated at \$20/hour for the first 40 hours, then \$30/hour for the additional 10 hours of OT.

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FLSA Compliance Cont'd: Exempt vs. Non-Exempt

Three Elements of Exemption/Overtime (OT) Analysis:

1. Salary Level
2. Salary Basis
3. Job Duties

Primary Exemptions:

- Executive
- Administrative
- Professional
 - Nurse
 - Physician Assistant
 - Medical Technician
 - Dental Hygienist

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Meal and Rest Breaks

- Rest breaks lasting 5-20 minute are compensable and must be paid
- Meal breaks typically last 30 minutes or more and do not have to be paid.
 - Employees cannot perform any work during meal breaks, otherwise the break time must be paid
 - **Auto-deductions for *unpaid meal breaks* do not cut it**

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FLSA Compliance- Employee vs. Independent Contractor

The FLSA presumes that workers are employees, *unless* the employer can prove that the worker is a true independent contractor

- Employees are paid W-2 wages, have federal and state taxes withheld from their paychecks, receive benefits, and are covered by workers' compensation
- Independent contractors receive Form 1099 payments, are responsible for paying all taxes, do not participate in company benefit plans, and are not covered by workers compensation

Misclassifying employees as independent contractors can result in steep penalties for the employer (*even if worker agreed to be hired as an independent contractor*)

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Internal Audits Are Your Friend

- ☐ Review and take stock of employee compensation, classifications and payroll records
- ☐ Identify possible "red flags" or violations (FLSA lookback is up to 3 years, states lookback up to 6 years)
- ☐ Identify impacted employees
- ☐ Analyze extent of potential violations, including unpaid wage calculations
- ☐ Determine method and manner of addressing any unpaid wage issues and implementing new policies

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Common Employment Issues- Part 2- Leaves and Accommodations

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Family and Medical Leave Act (FMLA)



- Applies to employers with:
 - 50+ employees within 75-mile radius
 - For each working day during 20+ calendar workweeks
 - In current or preceding calendar year
- Eligible employees have up to **12 weeks of unpaid leave in a 12-month period**, *if the employee has*:
 - Employed by covered employer for at least 12 months; *and*
 - Worked at least 1,250 hours in the consecutive 12 months prior to leave

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Reasons for FMLA

Primary reasons for leave:

- Employee is suffering from a “serious health condition”
- Care for a child, spouse, or parents suffering from “a serious health condition”
- Birth of new child, bonding, or placement of child for adoption or foster care within one year of birth/placement

“**Serious health condition**” includes many illnesses, injuries and impairments resulting in:

- Overnight/in-patient care, or
- Absence from regular daily activities for 3+ days; *and*
- Continuing treatment or supervision by health care provider

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Accommodations

Disability

- Americans with Disabilities Act
- Workers Compensation
- Medical Cannabis Laws
- Lactation Breaks
- Review of state and local law is key (location, paid/unpaid, privacy rules, etc.)

Religious

- Title VII of the Civil Rights Act

Generally, reasonable accommodations should be considered/provided, *unless* they cause an undue hardship on the employer

Establish a written accommodation request process

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Americans with Disabilities Act (ADA)

- *Requires employers to provide:*
 - **reasonable accommodations** to
 - qualified individuals with a **disability**
 - to allow employee to perform primary job duties
 - *Provided that* accommodation does not cause **undue hardship**
- Accommodations *may* include unpaid leave

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Paid Sick Leave

- **Many state and local governments have adopted their own mandatory paid sick leave laws** for employers of all sizes (i.e. NJ, NY, MD, IL, CA, MA, etc.)
 - Trend towards more states/cities adopting paid sick leave
- **When developing paid sick leave policies, consider:**
 - PTO vs. separate sick and vacation time
 - Full-time vs. Part-Time
 - Accrual vs. “Front-Loading”
 - Tracking sick leave
 - Payout of PTO at termination

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HYPOTHETICAL

Your employee, Fred, is regularly late to work and his lateness is starting to impact the other employees in his department.

For weeks, you have been telling Fred that his attendance needs to improve, but he continues to show up late multiple times per week.

You've finally done a write-up and presented it to Fred. He says that he is really sorry, but his "condition" has been flaring up.

Can you still give Fred the write-up?

Do you need to do anything else?

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HYPOTHETICAL

Suzy is an Office Coordinator. There have been some management changes and her new supervisor has a stricter style of management. The new management style caused Suzy a lot of stress and anxiety which exacerbated her ADD.

Suzy requests a transfer, and her manager denies it. She then requests accommodations including clarifying assignments in writing, allowing her to decide how long a task should take and avoiding early morning meetings. Her requests were denied.

Suzy's work has been riddled with mistakes lately and she is frequently 15-20 minutes late. Her supervisor has recommended her for termination.

Is she disabled?

What should her supervisor have done?

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Before Termination

Has the employee been put on notice of unacceptable conduct or deficient performances, and had an opportunity to improve?

What is your company's past practice regarding similarly situated employees who have engaged in the same or related conduct?

Would the employee in question be able to show that similarly situated employees outside of his/her protected categories were not terminated for the same or similar conduct?

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Best Practices

- Make sure Management/HR is involved
- Train supervisors on recognizing these issues and on when to involve HR
- Document all leaves properly, including all communications to employee about leave
- Keep lines of communication open
- Be mindful of optics
- Enforce attendance policies consistently
- Maintain accurate job descriptions



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Questions?



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