



Key HR Compliance Challenges

By: The Melita Group

In the ever-changing world of HR and benefits, maintaining compliance is a key challenge. Getting and staying in compliance can be a near impossible feat without the proactive assistance and support of a third party. At The Melita Group, one of our key roles is to assist our clients with their legal and compliance requirements through onsite audits and ongoing communications.

There are many challenges facing HR professionals who want to increase compliance within their organization. Some of the most common employment law challenges are:

Exempt vs. Non-Exempt Classification

Challenge: Many companies incorrectly classify employees as exempt in an effort to avoid overtime expenses or because they simply have not analyzed their various positions; however the cost of back wages, fines and possibly class action suits can be much higher. This is a large area for violation of the [Fair Labor Standards Act](#).

Solution: Conduct a thorough FLSA audit for all positions and ensure the appropriate classification. Include a clear definition of employment classifications in the Employee Handbook as well as a defined overtime policy.

Leaves of Absence (LOA) – FMLA/CFRA, etc.

Challenge: Incorrectly applying LOA policies or lack of documentation for LOAs resulting in miscommunication, heightened compliance issues and mismanagement of federal and state LOA requirements.

Solution: Implement a well, documented LOA policy in the Employee Handbook and ensure compliance with related laws (specifically in California) such as [Family Medical Leave Act](#), [California Family Rights Act](#) and [Pregnancy Disability Leave](#). Support a defined administrative process for LOAs including formalized templates and notification to employees requesting a LOA and return to work provisions. Companies must also ensure, in California, that employees requesting an LOA are provided with the applicable [State Disability Insurance \(SDI\)](#) and/or [Paid Family Leave \(PFL\)](#) compliance brochures.

Employee vs. Contractor (1099 compliance)

Challenge: Lack of compliance in this area can result in audits from the Employment Development Department (EDD) and applicable fines.

Solution: Ensure compliance with [Internal Revenue Service \(IRS\) 1099 standards](#) by implementing a well documented thorough process to assess the appropriate status of all workers and to minimize risk of misclassification.

Cost Savings Programs such as Layoffs and Mandatory Time Off

Challenge: In the current economy, many companies are faced with the task of cutting costs – this may include layoffs and forced time off without pay. There are many compliance issues with both of these approaches that if not handled correctly could cost the company more than the original cost savings. Companies are also incorrectly keeping termed employees as active employees for benefits purposes which can conflict with benefit plan documents.

Solution: Understand the many aspects to [managing an effective layoff](#) and the implications of [mandatory time off programs](#). Companies should terminate employees from their benefit plans at the time active employment ends and appropriately classify them as COBRA participants. Should the former employee elect COBRA, the company may choose to pay for COBRA for a period of time as part of any severance package.

New Hire and Termination Compliance Materials

Challenge: Lack of compliance with providing new hires and terminated employees with the appropriate compliance brochures.

Solution: California employers must ensure new hires are provided with: [State Disability Insurance \(SDI\)](#) brochure, [Paid Family Leave \(PFL\)](#) brochure, [Sexual Harassment](#) brochure, and the Workers Compensation brochures, typically provided by the Workers' Compensation carrier. In most termination situations, employers should also ensure employees are provided with the [EDD Unemployment](#) brochure, HIPP Notice, and Notice to Employees as to Change in Relationship. Employers should also work with their COBRA administrator to ensure the appropriate COBRA notices are provided to new hires and terminating employees.

Vacation and Paid Time Off (PTO) Accrual Caps

Challenge: In an effort to control accruals reported on financial reports, companies have a "use it lose it" vacation or PTO accrual policy which is illegal in California.


Solution: Implement a policy that has a maximum accrual cap, no less than 1.5 times (if not more) of the annual vacation or PTO accrual. This allows employees to accrue time off up to a maximum and then stops until some of the accrual is used. This also minimizes legal issues by not taking away an accrued benefit. Different terms apply for the accrual of sick time.

Companies should also ensure the current federal and state compliance posters are available (with all information completed) in an area viewable by all including the appropriate wage order. Many posting companies provide a consolidated federal and state poster, sometimes the [Wage Order posting](#) must be obtained separately. Receive a [10% discount](#) on all CalChamber products.

Maintaining employment law compliance is key for companies - our goal is to keep our clients informed and advised of the laws and rules that are applicable to them.

About the Author

[The Melita Group](#) is a Human Resources Professional Services Organization providing comprehensive HR and benefits consulting and outsourcing services to employers of all sizes. We work with our clients to help them meet the dual objectives of maximizing employee satisfaction while minimizing the expense and time associated with effectively managing HR and benefits.

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