



Title A: SMB Employment Compliance

Subtitle A: How what you don't know can hurt you

Title B: Employment Compliance for Small and Medium Businesses

Subtitle B: Understanding the risks and penalties

Title C: Understanding Employment Compliance

Subtitle C: What you need to know about your risks

How the Law Works

Everyone knows that the laws and regulations dictating employment standards are necessary for our country to be able to provide fair and safe workplaces for all. Without them, and without compliance, we put people at risk of harm or their right to earn a living.

In the United States, most regulations are set at the federal level through the U.S. Department of Labor (DoL). The DoL's job it is to develop and enforce the more than 180 federal laws surrounding employment standards and compliance. Supplementary local and state laws also exist to ensure continuous coverage where federal laws may be insufficient. Employers are required to know and comply with all of them.

These laws cover the entirety of a company's operations; trade practices, accounting and reporting requirements, discrimination, wages, hours and benefits, health, safety and environmental standards, and privacy, just to name a few. An error in any one of these areas can have a significant impact on your ability to operate your business.

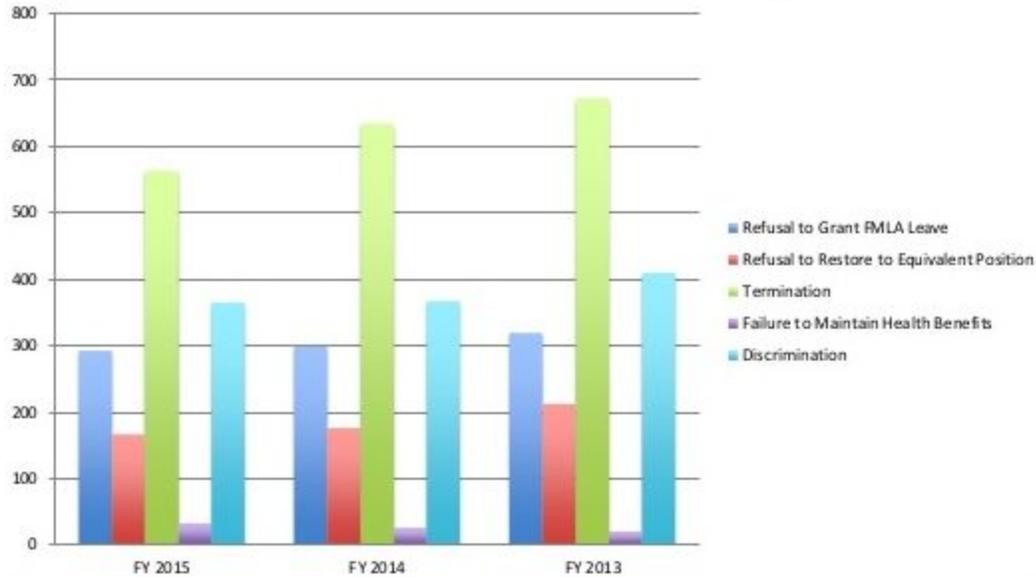
As the owner of a small to medium sized business (SMB), it can seem daunting to try to keep on top of all the regulations, knowing that a few small changes to your workforce can have a serious impact on your compliance obligations. Fortunately, the DoL recognizes this. They've established an Ombudsman, the Office of Small and Disadvantaged Business Utilization (OSDBU) that provides [resources and assistance](#) for small businesses to help them be compliant.

Additionally, there is the DoL's [Wage and Hour Division](#). They are responsible for enforcing a number of standards under various Acts that impact a vast majority of an SMB's operations, including, but not limited to:

- Fair Labor Standards Act (FLSA) (which governs rules around minimum wages, overtime pay, recordkeeping, and child labor)
- Family and Medical Leave Act (FMLA)
- Garnishment Provisions of the Consumer Credit Protection Act
- Migrant and Seasonal Agricultural Worker Protection Act
- Temporary Worker Provisions of the Immigration and Nationality Act

Generally, employers who find out they've been non-compliant usually aren't doing it on purpose. It's often a lack of understanding around classifications, definitions, and the thresholds that put them into different categories.

FMLA Enforcement Statistics: Nature of Complaint



[SOURCE](#)

Be aware that workers often file complaints directly with government agencies instead of bringing the subject up with their employer, resulting in investigations and audits. Understandably, repeat offenders are not viewed favorably.

Definitions and Classifications

When employees are not classified correctly, they are often denied access to benefits and other protections that they should be entitled to, including leave, wages and compensation, insurance and health benefits, and safe workplaces. Additionally, misclassified workers are not taxed at the correct rates which means that the government may not be getting all that they're entitled to.

[According to the DoL](#), "The misclassification of employees as independent contractors presents one of the most serious problems facing affected workers, employers and the entire economy." It's understandable why the government is so serious about correcting the problem.

Employee vs. Independent Contractor

For obvious reasons, the Internal Revenue Service's classification of employees is similar to that of the DoL. They use [three criteria to determine one's employment status](#):

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspects of the worker's job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Affirmative answers to these questions tend to put the individual in the employee category, but it does depend on particular circumstances around the work. Check the DoL or IRS website to learn more about the nuances of classification.

For the most part, independent contractors have the freedom to accept or decline work from a company or individual. They also dictate what work will be performed and how. When a company takes over these aspects it implies a master-servant (otherwise known as an employer-employee) relationship.

The [Federal Insurance Contributions Act \(FICA\)](#) requires that employers withhold state and federal income taxes from employees' pay, and submit those taxes to the government on the employee's behalf. Employers should not withhold tax from the pay of an independent contractor—they are responsible for managing and submitting their own tax payments.

When it comes to the rules of the [Affordable Care Act \(ACA\)](#) additional criteria are used to determine whether an employee is full-time or full-time equivalent (FTE). Companies with 50 or more FTEs are considered Applicable Large Employers (ALEs) and, therefore, are subject to the regulations under the ACA. It gets tricky for companies that employ part-time, temporary, and/or seasonal workers, or that have offices in different U.S. jurisdictions since all of these various employee statuses affect FTE numbers. For more information on the ACA, refer to GoCo's blog post on ACA Compliance.

Overtime and Wage Requirements

The Fair Labor Standards Act (FLSA) governs the rules around minimum wages, overtime pay, recordkeeping, and child labor. There are a number of exceptions that exempt workers from one or many of these rules. It is in your best interest to review the list of exceptions and consult your local [Wage and Hour Division office](#) for specifics.

A common inquiry that the Wage and Hour Division gets has to do with Exempt and Non-Exempt Workers, meaning is the employee exempt from overtime eligibility or not. Most employees covered by the FLSA are non-exempt.

In most, but not all cases, each of these three general criteria must be met for someone to be exempt from receiving overtime pay:

- The employee must be paid at least \$23,600 per year (\$455 per week)
- They must be a salaried employee
- They must perform the job duties of [an exempt employee](#)

Employers are required to pay non-exempt employees 1.5x their regular rate of pay when they work more than 40 hours in a week.

Penalties for Non-Compliance

Understandably, each law and regulation has an associated penalty for non-compliance. These penalties vary considerably, can be applied at local, state or federal levels, and may include:

- serious fines
- audits
- imprisonment
- business operations and other licenses being revoked
- a change in business status
- dissolution of the business

Additionally, having a non-compliance penalty applied from a government agency may open a company up to potential lawsuits from individual workers and/or shareholders, as well as the government itself, and put the company at risk of losing funding from investors.



In fiscal year 2016, WHD found more than \$266 million in back wages for more than 280,000 workers

In fiscal year 2016, WHD found \$77.2 million in low wage industries for 106,000 workers.

[SOURCE](#)

The Wage and Hour Division lists the [penalties for non-compliance](#) on their website. In terms of incorrect worker classification, you could be subjected to paying federal and/or state back taxes and wages associated with that employee's correct status. That's in addition to the fine you'll have to pay.

For ACA non-compliance, the fees are [convoluted and numerable](#). They can range from \$2,000 per employee per incident for non-coverage, to a maximum of \$3 million a year for incorrectly filing or supplying the required forms.

If all this sounds threatening, it's supposed to. But know that in general the government is looking for indications that a company has gone to reasonable lengths to consistently remain compliant. As with any law, ignorance is never an acceptable excuse.

For companies who view compliance as a necessary evil, it may be easier to think of it as an internal requirement rather than an external one with painful reporting requirements. After all, compliance really is just a best-practices guide to managing your people and your operations. Establishing high standards for your company to live by encourages good ethics, fairness, transparency, and safety, and decreases your risk of litigation and/or fines.

Having high operational standards can also increase employee engagement and retention, and make you more attractive to new recruits. Studies show that employees who are engaged [will go to greater lengths](#) to help their employers reach their objectives, and this includes keeping them compliant and “watching their backs,” and hopefully, not interested in filing complaints against them.

Benefits of Outsourcing Compliance

Because it can be challenging operating a business and trying to remain abreast of the latest regulations surrounding employment standards, many companies choose to outsource their compliance upkeep to professionals.

A good compliance company can:

- Conduct an internal compliance audit to determine where risks may exist
- Review and draft employee policies and handbooks
- Review and categorize all workers to determine employee status and related obligations
- Train management, HR and employees on litigation avoidance and compliance obligations
- Manage employee requests for accommodation and complaints
- Navigate your company through external audits

You work too hard for your company to have it fail. Being non-compliant with government regulations can seriously impact your company's future and put your reputation at risk. If you're unsure about any aspect of the process, it is a good idea to seek professional help from the various government agencies or from a compliance expert.