



How to Stay Multistate Compliant with Employment Laws When Your Company is Expanding



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Introduction

- **Today's workplace is expanding at a rapid pace, and your business may be one of many transitioning to a multistate workforce—whether you're setting up shop in new locations or have one or more employees working remotely in another state.**

A growing business brings excitement and new prospects, but it can also add complexity to your organization's regulatory framework. If you have one or more employees working in another state, you're required to comply with applicable employment laws and regulations for that location in addition to federal employment laws. This can be a difficult task given the complex and constantly evolving employment law landscape.

When you have expert guidance and systems in place to ensure regulatory compliance, you mitigate your company's risks and provide a safe, equitable, and nurturing work environment for your employees.

In this guide, you'll find best practices, guidelines, and helpful input from G&A compliance experts to help your company navigate multistate employment law compliance as well as information about regulations that vary from state to state.



1

The Risks and Rewards of Employment Law Compliance

- Employers must comply with applicable employment laws in states where they have employees conducting business on their behalf. This applies whether or not your company has a physical location—such as office space, warehouse, or storefront—in that state.

“If you hire an employee in ‘X’ state, or if one of your existing employees moves there and works remotely from home in that state, you are still conducting business there,” says Kelley Zanfardino, Manager, Compliance Services for G&A Partners. “All employment laws enacted by various states apply to employees who work within the state’s borders, so you must follow the law or risk possible penalties and fines that could result from noncompliance.”

For example, Zanfardino says, New Mexico enacted a paid sick leave law, and qualifying employers who do business in New Mexico must comply with the law. So, if you have your company headquarters in Texas (which does not have a paid sick leave law) and you have an employee who works from home in neighboring New Mexico, you still must comply with all of New Mexico’s employment laws that cover that individual worker.

“All employment laws enacted by various states apply to employees who work within the state’s borders, so you must follow the law or risk possible penalties and fines that could result from noncompliance.”

Kelley Zanfardino, Manager,
Compliance Services for G&A Partners



Rewards of Employment Law Compliance



According to the Houston Chronicle’s [“Importance of Compliance in Business”](#) by Steve Milano, when your organization fully complies with all laws that apply to your multistate operations, you reap several pro-business benefits, including:

Fewer Legal Problems

Employment law compliance decreases your risk of fines, penalties, work stoppages, lawsuits, or a temporary business shutdown.

Safer Workplace Operations

Federal and state safety-focused rules and regulations help create a secure work environment for employees and, in turn, strengthen and safeguard your company’s operations.

Improved Public Relations

You can include information about your company’s Equal Employment Opportunity (EEO)-compliant hiring practices on your website, job listings, and other marketing materials and communicate your company’s commitment to legal compliance and a safe workplace when recruiting new employees.

Higher Employee Retention Rates

Many federal and state laws protect employees and ensure companies provide a fair, professional, and safe work environment. This, in turn, encourages employees to stay rather than search for a new job, which can improve your company’s employee retention rate.

Eleesha Martin, Manager of [Recruitment Process Outsourcing \(RPO\) Services](#) for G&A Partners, estimates that the [average cost of replacing just one employee](#) ranges from one-third to two times their annual salary, not to mention the negative impact it can have on company culture and employee morale.

Risks of Employment Law Noncompliance

The risks (and cost) of noncompliance can be high and may include:

- ▶ Damage to your company's reputation
- ▶ Declining employee recruitment and retention rates
- ▶ Reduced productivity
- ▶ Potential penalties, fines, and legal costs associated with attorney's fees and lawsuits

Penalties, fees, and costs vary by compliance violation, but here are some examples of fines and costs for federal law violations:

[Occupation Health and Safety Administration \(OSHA\)](#): Fines up to \$14,502 for each violation and \$14,502 more for each day that the company is late in lessening, reducing, or removing the hazard. Companies can also face up to \$145,027 in penalties for willful or repeated violations.

[Fair Labor Standards Act \(FLSA\)](#): Back pay in the amount of unpaid minimum wages and overtime compensation, front pay in the amount of the unpaid wages (if the employee is wrongfully terminated), liquidated damages in the amount of unpaid wages (unless the employer can demonstrate good faith), and civil money penalties (paid to the government).

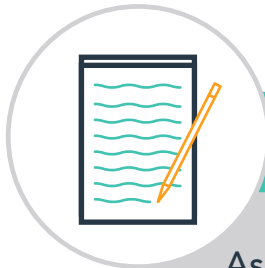
Penalties for state employment law violations also vary, but can be similarly costly.

2

Employment Laws that Affect a Multistate Workforce

Employers need a robust legislative and regulatory compliance structure in place to manage a multistate workforce. Depending on where your company has a presence, you could have varying requirements such as deducting and remitting state payroll taxes (including state income and unemployment taxes), coverage under a proper workers' compensation policy, and ensuring employees receive all rights and benefits conferred to them by the state legislature and regulatory agencies.

"This can be challenging because all this information is not housed in one, easy-to-navigate resource," says G&A Partners' Kelley Zanfardino. "Information regarding tax requirements is captured in a different place than unemployment information, and the applicable laws and regulations have been enacted over many decades, so finding information on requirements that have been in place for a long time can be challenging."



Take Note

As a rule of thumb, federal employment laws set the minimum requirements. But when state or local laws set higher standards, you must adhere to those standards plus those in the federal laws. State, county, or city laws and regulations may also require something different that is not addressed at all in the federal laws.

Following is a summary of a few employment laws — federal , state, city, or county — that may apply to your company if you have employees working in those jurisdictions.

Anti-Discrimination Laws

The [U.S. Equal Employment Opportunity Commission \(EEOC\)](#) enforces federal laws prohibiting employment discrimination. These laws protect employees and job applicants from employment discrimination when it involves:

- ▶ Unfair treatment because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information.
- ▶ Harassment by managers, co-workers, or others in the workplace because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.
- ▶ Denial of a reasonable workplace accommodation that an employee needs because of religious beliefs or disability.

EEOC regulations apply to employers with at least 15 employees (20 employees in age-discrimination cases) and all work-related activities, including hiring, firing, promotions, harassment, training, and payment of wages and benefits.

Laws by State

In addition to federal law, several states have added gender identity, sexual orientation, and gender expression as protected characteristics to local anti-discrimination laws. Many require mandatory harassment prevention training for managers, supervisors, and employees.

Find more information on recent anti-discriminatory regulations, along with specific examples of changes to state anti-discrimination laws in Hall, Render, Killian, Heath & Lyman, P.C.'s "[New Anti-Discrimination Laws Around the Country.](#)"

Employee Leave Laws

The federal [Family Medical Leave Act \(FMLA\)](#) applies to employers with 50 or more employees and allows eligible employees up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons; and up to 26 weeks to care for a covered service member with a serious injury or illness.

Though FMLA leave is unpaid, workers may choose, or employers may require them to, use accrued paid sick, vacation, or personal time while on FMLA leave. Employers are also required to continue paying the employer's share of workers' group health insurance premiums on the same terms as if the employees were not on leave.



Take Note

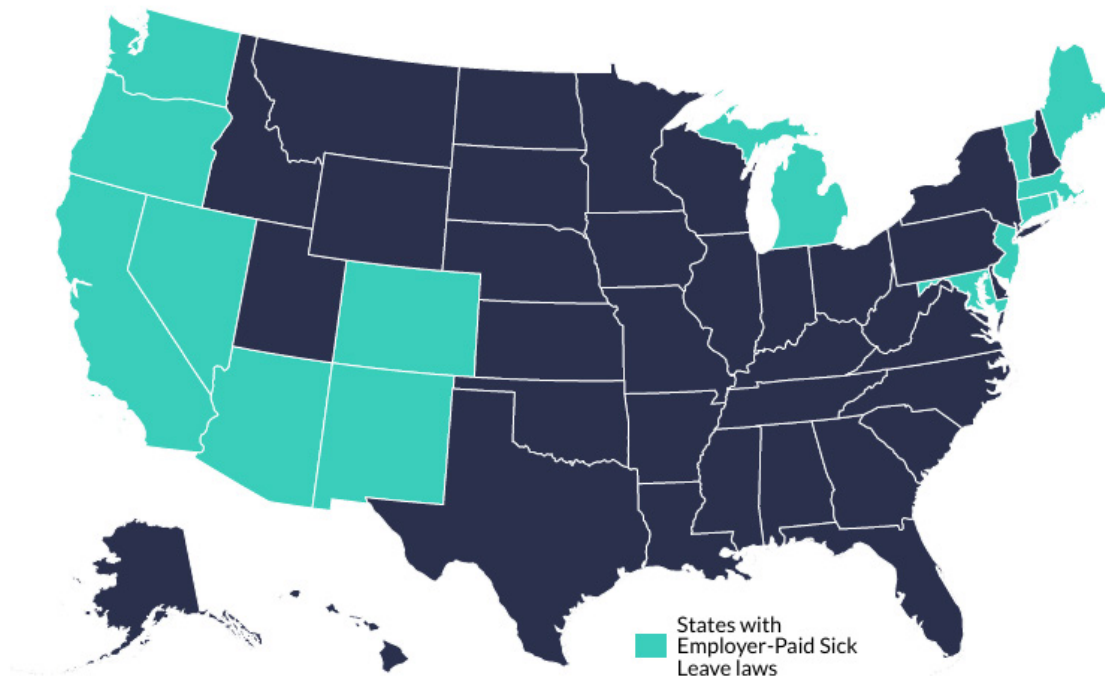
Eligible employees are those who have worked for at least 20 weeks in the current or preceding calendar year, and who have worked at least 1,250 hours during the prior 12 months in a location that has 50 or more employees within a 75-mile radius.

Laws by State

Some state and local governments have enacted employer-paid sick leave laws, typically for absences due to short-term illness or injury, and preventive healthcare for the employee and the employee's children or other family members. Most have exemptions based on the size and type of employer or allow employers to impose specific worker eligibility requirements. Some also permit employers to set a waiting period before new employees use accrued leave.

Check the below sources to see if any of your employees work in a state and/or local jurisdiction that has employer-paid sick leave laws:

- [States with Employer-Paid Sick Leave Laws](#)
- [Local Jurisdictions with Employer-Paid Sick Leave Laws](#)



On average, state and local paid family and medical leave (PFML) provides six to 12 weeks of full or partially paid leave per year without accrual. Paid family and medical leave may be insured and funded by employer and/or employee contributions. Generally, PFML allows workers to:

- Take longer periods of leave to recover from a more serious personal injury or illness
- Care for a loved one
- Take leave for the birth or adoption of a child



Several states have expanded job-protected leave benefits beyond FMLA's minimum standards by expanding eligibility, the duration of leave, the definition of family members, or qualified reasons for taking leave in the private or public sector. [Find the expanded eligibility state list here.](#)

At the state and local levels, there is a growing trend toward universal paid leave or "paid leave for any reason" programs. In addition, G&A Partners' Eleesha Martin says many employers offer voluntary [paid family leave](#) in states that do not require it. "Candidates want to work for

companies that provide paid family leave," Martin says. "By offering this benefit—even if you aren't required to—you can attract top talent, boost retention rates, and improve employee engagement and morale. It's a win-win."

● Wage and Labor Laws

Wage and hour laws primarily determine the wage rates you're required to pay and the hours for which you must compensate employees.

If your organization generates more than \$500,000 a year (with some exceptions) and engages in interstate commerce, you're subject to federal and state wage and hour laws.

[The U.S. Department of Labor's Wage and Hour Division \(WHD\)](#) enforces the [Fair Labor Standards Act \(FLSA\)](#), which sets minimum wage and overtime pay standards, outlines employer record-keeping requirements, and establishes child labor regulations.

If your business is subject to the FLSA, these are the main compliance requirements:

▶ **Minimum Wage and Overtime**

The FLSA requires employers to pay employees who are not exempt from minimum wage provisions an hourly wage of no less than \$7.25 per hour. Some states may have enacted minimum wage laws that exceed the federal requirement, and employers doing business in those states must comply with the state law if it is more generous than the federal law. Overtime is generally at time-and-a-half when an employee works more than 40 hours in a seven-day workweek, except in California where the law requires that employers pay daily overtime.

▶ **Exempt vs. Nonexempt Employees**

Some employees are exempt from the FLSA's requirements. Employees paid on a salary basis are generally exempt from overtime and minimum wage provisions. Some employees are exempt from the minimum wage regulations but not the overtime regulations or vice versa. The [Department of Labor's Handy Reference Guide to the FLSA](#) has more information about which employees are exempt from the Act's requirements. All types of employees who are not on the exemptions list are called "nonexempt" employees, and the Act's minimum wage and overtime protections apply to them.

▶ **Record-keeping Requirements**

Employers covered under FLSA regulations must keep and maintain employee records with information including employee name and social security number (or other identifying number used in payroll records), address, occupation, regular pay rate, and more.

Laws by State

Employers must also comply with wage and labor laws of the state or local jurisdiction where employees are located. "This is particularly true in the context of wage and hour laws which 1) apply immediately and 2) with at least one employee working (out of) state on an extended or permanent basis," according to Husch Blackwell's "[Employers with Out-of-State Employees: Method for Assessing Differences in Wage & Hour Obligations](#)" by Tracey O'Brien & Thomas Cedoz.

● Pay Equity Laws



Nearly all businesses are subject to laws enforced by the EEOC that promote pay equity and prohibit pay discrimination.

The federal Equal Pay Act of 1963 (EPA) makes it illegal for employers to pay workers of one sex lower wages than workers of another sex for equal work in jobs requiring the same skill, effort, and responsibility. It also allows employees to sue for damages directly.

The federal [Equal Pay Act of 1963](#) (EPA) law applies to all businesses and governmental entities with more than one employee. In addition, federal compensation discrimination regulations in Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967 (ADEA), Title I of the Americans with Disabilities Act of 1990 (ADA), and the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibit compensation discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information.

The types of compensation covered under these EEOC pay-equity laws include:

- Salary
- Overtime pay
- Bonuses
- Stock options
- Profit-sharing and bonus plans
- Life insurance
- Vacation and holiday pay
- Travel allowances and reimbursements

Laws by State

All states have enacted pay-equity laws except Louisiana, North Carolina, South Carolina, Texas, Utah, Wisconsin, and the District of Columbia. However, all seven have pay-related provisions in their employment-discrimination laws.

In addition, several states have passed wage transparency laws requiring employers to disclose a wage scale or salary range for each job posting, and/or salary history ban statutes prohibiting employers from asking applicants about current or past salaries.

Finally, some states have exceptions for small businesses, typically exempting employers with a specified number of employees. Refer to [Littler Mendelson P.C.'s Pay Equity Laws Map](#) for more information about each state's pay equity, pay discrimination, wage transparency, and salary history ban laws.

Occupational Safety Laws



Federal law requires that employers maintain a safe workplace by complying with requirements outlined in the Occupational Health and Safety Administration (OSHA) Act, which include:

- ▶ Review current regulations to ensure you are implementing OSHA's required safety and reporting measures to provide a safe workplace that is free of known hazards.
- ▶ Maintain an annual log of recordable workplace injuries and illnesses on OSHA Form 300 and retain the record for five years. (Note: This requirement applies to most employers with more than 10 employees not on the excepted industry list.)
- ▶ Report all work-related fatalities in the time frame dictated by the state workers' compensation law.
- ▶ Provide required training to all workers in a language and vocabulary they can understand.
- ▶ Prominently display OSHA's "Job Safety and Health: It's The Law" poster in the workplace. Employers can [download a free copy](#) of the required poster from OSHA.
- ▶ Post OSHA citations at or near the site of alleged violations.
- ▶ Be aware of enforcement policies related to COVID-19.

Laws by State

In addition, a growing list of states have [OSHA-approved "State Plans,"](#) which are state-run safety and health programs that cover the private sector and/or state and local government employees, and most self-employed workers.

If your company operates in one of these states, you are required to administer additional safety measures outlined in their state plan. [Find a list of states with OSHA-approved "State Plans" here.](#)



Worker Classification Laws

The line between classifying an “employee” and “contractor” sometimes blurs, but it should be clearly designated for your company [to comply with the law](#).

The U.S. Internal Revenue Service (IRS) has established rules for determining a worker’s status and recommends using the criteria (or factors) outlined in [“Common Law Rules”](#) when deciding how to classify individuals as independent contractors or employees.



Take Note

Generally, the IRS defines an employee as an individual who performs services for an employer who, in turn, controls how and what work is done. An independent contractor is generally defined as an individual who controls or directs how and when work is performed and provides the company the work product or services for which they are contracted. NOTE: Several states have their own independent contractor tests, some of which are more stringent than the IRS test.

U.S. laws that provide workers protection against misclassification include:

▶ **U.S. Department of Labor Wage and Hour Division's "Misclassification Initiative"**

A federal-state effort to protect employees' rights and prevent their misclassification as independent contractors and other "nonemployee" terms. The DOL initiative defines misclassification as "employers who incorrectly treat workers who are employees under this federal law as independent contractors" and may try to deny the workers benefits and protections to which they are legally entitled.

▶ **Internal Revenue Code**

This code states that employers must withhold income taxes for employees (reported on a Form W-2) but not for independent contractors (who report their income on a Form 1099). Therefore, an employer who misclassifies an employee as an independent contractor with no reasonable basis for doing so can be held liable for employment taxes for that worker, including all unpaid employer federal, state, and local income tax withholding payments as well as a percentage of the employee's income tax withholding and FICA payments (Social Security and Medicare contributions).

Laws by State

When you expand your operations to employ remote workers in another state, worker classifications are essential for compliance with state unemployment insurance and workers' compensation laws, which provide protections for workers who lose their job or are injured on the job. Workers classified as independent contractors are not eligible for compensation and other benefits these programs offer.

These are roadblocks your company could encounter if you misclassify a worker:

- If a state unemployment agency believes a worker was misclassified as an independent contractor, they could grant the worker benefits and require the employer to pay unemployment insurance premiums and penalties. Contact the [relevant state agency](#) to learn more about tests that determine workers' classification and other eligibility under state unemployment insurance laws.
- An employer can be held liable for a misclassified independent contractor's on-the-job injuries and penalties. [Contact the relevant state workers' compensation board](#) to find out how a worker's employment status affects workers' compensation benefits.



● Workers' Compensation Laws

There is no federal umbrella workers' compensation law, but the U.S. Department of Labor's [Office of Workers' Compensation Programs \(OWCP\)](#) administers disability compensation programs that provide benefits to certain workers (or their dependents) who are injured at work or acquire an occupational disease. Those include:

- ▶ [Longshore and Harbor Workers' Compensation Program](#)
- ▶ [Federal Black Lung Program](#)
- ▶ [Energy Employees Occupational Illness Compensation Program](#)

Laws by State

Though they differ in the details, every state, except Texas, has a law requiring most employers to purchase workers' compensation insurance that provides a range of benefits to employees who are injured or become ill because of their jobs.

According to [Smith Amundsen's article on remaining compliant when hiring remote employees](#), employers should be particularly mindful of these laws as they will be required to purchase workers' compensation insurance as soon as they hire their first employee in many states.

"An employer should notify its workers' compensation carrier about the remote work arrangement and the employee's remote location," states the article. "In most cases, remote employees will be considered localized in the state where they work remotely."

● Taxes and Financial Reporting Regulations

In addition to paying wages and fulfilling federal payroll tax obligations, employers are responsible for remitting state taxes such as income, disability, and unemployment taxes. These vary significantly from state to state and may include fees or taxes in cities and counties when employees live or work within their jurisdictions. For these reasons, and many others, it is imperative that [your remote workers](#) report changes in residence, particularly if they move out of state—or even out of the country.



Organizations should explore how the following conditions impact their state tax obligations:

▶ **Nexus**

Nexus generally refers to the nature and frequency of contacts that an out-of-state company must establish in a state before it becomes subject to that state's tax laws and jurisdiction. For example, a company is generally considered doing business and subject to a state's income tax laws if the company has employees working in the state, but rules vary. To maintain compliance in all states where your company has a location or remote workers, you should determine the relevant state's nexus standard and the corresponding income taxes, gross receipts taxes, sales taxes, and local business taxes that your company is obligated to pay. Failure to abide by a jurisdiction's tax rules can result in penalties and interest.

▶ **Apportionment**

Apportionment is the assignment of a portion of a corporation's income to a particular state to determine the corporation's income tax in that state. The state(s) where your company is doing business or has a remote workforce presence determines how much of your earnings result from business done in that state so it can charge you the right amount of income tax.

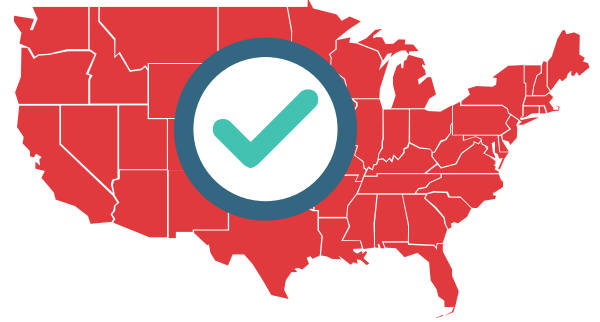


Take Note

An organization's employment tax withholding obligations include federal income tax and the employee's share of Social Security and Medicare taxes (FICA taxes). In addition, your company is also required to withhold state disability tax if required by the state and state income tax for the state in which services are performed—except for those without a state income tax, including Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming.

3

Best Practices: How to Master Multistate Compliance



Whether you open an additional location or employ remote workers in another city, state, or region, your business must comply with local and state employment laws and regulations.

These recommended best practices can help you manage remote workers while adhering to applicable employment laws and tax regulations:

▶ Register with Local and State Agencies

If you have not already, register your company with all local and state tax agencies in the states in which you have employees, whether a full-scale office location or one remote employee. Also, make sure you apply for and obtain all in-state licenses and certifications required by your business' or remote worker's profession. (Note: Some states limit the number of out-of-state hires who can be licensed in that state, and some require remote employees to have a home occupation permit.)

▶ Comply with Local Workplace Regulations

States have varying laws that govern workplaces in their jurisdiction, such as [minimum wage and overtime laws](#), required minimum [meal and rest periods](#), and [payday requirements](#) (how often and in what manner employees must receive a paycheck). Your business must comply with these regulations, so brush up on them before doing business outside your home state.

▶ Review Your Tax and Withholding Obligations

Employment tax laws vary by state and city, so become familiar with local requirements. Likewise, workers' compensation and unemployment insurance programs are run by state agencies, so you need to be familiar with these obligations. Determine the relevant state's nexus standard and the corresponding income taxes, gross receipts, sales, and local business taxes your company is obligated to pay.

▶ **Document Your Policies and Procedures**

Review and, if necessary, modify your company’s hybrid or multistate workplace policy. If your company doesn’t have a policy, create one that reflects your workplace strategy. Ensure that it incorporates guidelines and procedures for employees working at the workplace or in remote locations. In addition, include practices you will follow to ensure your company operates effectively and legally within the laws of local and state jurisdictions where you employ workers. Finally, ensure your policy is reflected in your [employee handbook](#).

▶ **Work with a Team of Experts**

Managing multiple locations and a remote workforce can be a complicated and involved process. Consider working with a [professional employer organization \(PEO\)](#), which can help you navigate the complexities of a multistate workplace model and support a remote team.





G&A Partners has HR professionals who understand the nuances of multistate employment law compliance, and we can help you keep your organization compliant everywhere you have a work presence. We also offer clients our state-by-state Compliance Starter Kits, which include:

- **Highlights of critical things to know about the specific state**
- **Suggested content to include in a state-specific handbook**
- **Resources from a major legal firm regarding relevant laws in that state**
- **State-required posters and notices that organizations must display publicly (some kits include required city-level posters as well)**

Nothing in this material is intended to be nor should it be construed as legal or financial advice. All data and opinions contained herein are for informational purposes only, may contain errors, and are subject to revision. You should consult with licensed professionals in their respective areas of expertise before making decisions about the topics covered herein. This material is not intended to reflect all circumstances, ranges, or possible outcomes. Your results and experiences will vary and will depend on your specific situation. No promises, assurances, offers, or guarantees are presented herein.

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