

Labor law timekeeping compliance checklist

Labor laws at the federal, state and local level are complicated and change all the time. 70% of employers audited are found in violation, according to a recent estimate. In New York, you risk large financial damages, personal liability and even jail time for violations. Timekeeping problems put you at significant risk.

Use this checklist as a guide to see if you have any obvious problems in your timekeeping that expose you to risk of violation. We also recommend that you consult legal, accounting, payroll and HR experts to ensure you are doing all you can to protect yourself, your company and your employees.

Employee Details

- 1. Check 1099s to verify independent contractors are not actually employees
- 2. Make sure job descriptions properly describe work performed
- 3. Properly classify employees as exempt or non-exempt
- 4. Train staff on exempt status and that compliance is a matter of law
- 5. Encourage employees to resolve wage questions directly with employers

Compliance

- 1. Keep an updated, written timekeeping policy
- 2. Regularly remind employees of timekeeping policy
- 3. Test employees for understanding of timekeeping policy
- 4. Pay all non-exempt workers for all work performed, including pre and post-shift work and overtime.
- 5. Investigate situations where employees are owed overtime or time worked pay, such as:
 - a. Salaried workers were not paid a full week's pay
 - b. Non-exempt employees were required to be on premises when off the clock
 - c. Non-exempt employees were restricted in what they could do when off premise
- 6. Verify meal breaks were taken
- 7. Follow clock-in time rounding rules applicable to your area. Make sure rounding is fair in practice.
- 8. If audited, ask the scope. Produce records for affected groups. Comply with any investigative demand within 72 hours.
- 9. Meet company witnesses to review matters. Use records to support testimony.
- 10. Ensure that employees understand FLSA, state wage laws, wage policies and procedures, record-keeping obligations
- 11. Document and enforce compensatory time policy
- 12. Comply with
 - a. Applicable prevailing wage laws
 - b. Applicable minimum wage laws
 - c. Applicable wage theft laws
 - d. FMLA
 - e. ACA
 - f. FLSA
 - g. ERISA
- 13. Have an insurance policy in place for
 - a. New York Paid Family Leave
 - b. New York Workers Compensation
 - c. New York Statutory Disability
- 14. Calculate whether you are subject to ACA employer shared responsibility
- 15. Conduct a workforce analysis to determine distribution of full-time, part-time and contract labor as well as percentage of overtime (planned and unplanned)
- 16. Determine the look-back period measurement for ACA
- 17. Determine if ACA contributions are unaffordable to any FTE
- 18. Verify that policies are implemented in practice
- 19. Establish a formal process for reporting/resolving wage concerns

Recordkeeping

- 1. Keep paperless, current, accurate, and daily timekeeping records and written policies/procedures
- 2. Keep current and accurate payroll records and written policies and procedures
- 3. Establish timekeeping procedures
 - a. Work schedules (start/end/meals)
 - b. Absent/tardy call-in procedures
 - c. Time-off requests
 - d. Overtime requests
 - e. Person responsible for certifying employee timesheets
 - f. Project timekeeping deadlines
 - g. Project timekeeping procedures & emergency back-up plans
 - h. Payroll and certification procedures for employees
 - i. Employee time/leave certification process
- 4. Establish procedures for employees to challenge improper deductions
- 5. Write up employees who do not comply with rules on punch in, punch out, rest and meal breaks
- 6. Mark all documents confidential and proprietary. Protect trade secret information and keep duplicates
- 7. Keep records for six years (rules vary by jurisdiction — New York requires six years)

Data Gathering

- 1. Use a digital timekeeping system
- 2. Use biometric readers to avoid buddy punching and prove compliance
- 3. Record meal breaks as they happen
- 4. Record all hours worked for all employees whether paid or not
- 5. Lockout employees from the timeclock so they cannot start working early
- 6. Complete timesheets daily
- 7. Ensure convenient entry of all hours worked
- 8. Track overtime (even if it is unpaid for exempt, for example) for total time accounting
- 9. Allocate time to different projects using labor/job codes
- 10. Track time off
- 11. Give employees access to their timesheets

Data Review and Reporting

- 1. Review daily reports on staff utilization
- 2. Produce reports for insight into staffing and budget
- 3. Review time data
 - a. Hours scheduled versus actual
 - b. Overtime requests versus actual
 - c. Leave requests versus actual
 - d. Supporting documents for time off taken (doctor note, jury duty)
 - e. Signed timesheets
 - f. Require supervisor approve/co-sign on all timesheets
- 4. Record corrections
 - a. Require employee signature for timecard changes
 - b. Document reason for timecard change
- 5. Prevent supervisors from entering or changing timesheets without employee concurrence
- 6. Ensure that timesheets from prior periods cannot be modified after posting or payroll cutoff
- 7. Export electronically to payroll to ensure rapid transfer without rekeying errors
- 8. Ensure that payroll and timekeeping records tie out perfectly

Scheduling

- 1. Use templates for faster and clearer scheduling
- 2. View all available staff at a glance to enable easy fill of open shifts
- 3. Allow shift swapping with supervisor approval
- 4. Set rules for shift swapping based on coverage, budget, overtime limits
- 5. Set notifications for potential overtime situations
- 6. Apply rules to calculate proper compensation based on schedule
- 7. Track certifications and other qualifications to assist supervisors in selecting best candidates to fill open shifts

This checklist is meant to assist in general understanding of the current law. It is not to be regarded as legal advice. Seek advice of counsel for particular questions.