



# The Top 7 Compliance Risks And How to Avoid Them



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by Paycor



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## EXECUTIVE SUMMARY:

# Top 7 Compliance Risks of 2021

**RISK 1: Underpreparing for Remote Work:** Remote work laws are evolving at every level of government. It's more important than ever to over-communicate with your team, especially if they are distributed across the country.

**RISK 2: Ignoring "Fair Workweek" Laws:** Predictive work schedule laws are getting national attention, with a lot happening at the state and local levels. Make your scheduling system best in class, but don't do it for the government, do it for your employees.

**RISK 3: Pushing Pause on Pay Equity:** Establishing pay equity is a heavy lift that requires a deep dive into comp data, but now's the time to do it. Market-vetted comp that's equitable and transparent is a key to recruiting and retention.

**RISK 4: Assuming the Way You Recruit Is Legal:** As the number of violations and lawsuits continue to rise, it's critical that employers educate recruiters on proper interview procedures and document the process in a way that tells the "story" of each applicant's journey.

**RISK 5: Assuming the Way You Promote Employees Is Fair:**

The Supreme Court ruling on LGBTQ rights in 2020 continued the trend toward greater workplace protections, so it's more important than ever to reinforce your promotion decisions with a fair, consistent and documented performance review process.

**RISK 6: Misclassifying Workers:** The IRS admits that classifying employees can be difficult, as there's no single factor by which you can make the determination. Proper documentation, recordkeeping and employee communication is the best risk mitigation strategy.

**RISK 7: Not Accurately Verifying Employment Eligibility:**

Seventy-six percent of paper I-9s contain an error that could result in a fine (USCIS), and the average fine per form is \$1,862. Your HR software should automate the process with e-signature and proper document storage in case of an audit.



## RISK 1:

# Underpreparing for Remote Work

### WHAT YOU NEED TO KNOW:

There's a lot to love about remote work. It expands and broadens the talent pool. It lowers (or eliminates) the cost of office space. Most employees like having the flexibility. The compliance risks, however, run the gamut. **Remote work laws are evolving at every level of government,** so the more your team spreads out, the more complex things get.

Take taxes—employers are required to withhold and remit taxes in states where they are considered a mandatory withholding agent. This analysis can be different from one state to the next. Do they need to register in states where they employ remote workers? That depends on state and local laws and legal concepts such as “nexus.” **States have different legal views on data privacy, too. And expense reimbursements. And worker's comp. And leave laws.** For example, if you're an Ohio-based company and you have an employee working remotely from Chicago, you'll have to abide by the city's ordinance that allows workers to accrue paid sick leave.



## WHAT YOU NEED TO DO:

Parsing guidance written by state and local governments isn't easy, especially as it proliferates in response to changing conditions. Your HR & payroll provider should mind the details for you.

**What you can do is over-communicate with your team.** Survey your remote team to find out where they're working and how they're handling technology and connectivity issues. (Some employers may want to use time tracking to verify where and when workers check-in, provided you don't run afoul of local privacy laws.)



And remember, **managers are more important than ever.** Just because a manager was great in-person doesn't mean they automatically know how to lead a virtual team. **Train managers to meaningfully connect with their teams virtually, effectively lead online meetings and constructively engage remote workers.**



RISK 2:

## Ignoring "Fair Workweek" Laws

### WHAT YOU NEED TO KNOW:

Predictive work schedule laws require employers to give good faith estimates of likely hours, provide minimum break times between shifts, avoid "clopening" (where an employee takes both closing and opening shifts), avoid late schedule changes and keep more detailed schedule records.

In January 2021, Chicago began to enforce work schedule laws. Days later, New York City strengthened its Fair Workweek legislation to protect against sudden reductions in shift-volume for fast food workers. **Momentum for Fair Workweek laws is building**, so businesses of all sizes should prepare (not only for compliance, but because fine tuning your schedule can save money, among many other benefits).





## WHAT YOU NEED TO DO:

**Make your scheduling system best in class, but don't do it for the government, do it for your employees.** If you want them to show up fresh, be engaged and stick around (much less exhibit company loyalty), [invest in stable, predictable scheduling](#). Duke University found that a predictive work schedule law passed in Emeryville, California, actually improved sleep quality and stress levels for employees with young children ([Duke University](#)). Work/life balance is key to employee engagement, productivity and preventing staff turnover. And applying analytics to your schedule can drive cost savings and efficiency throughout the organization.



### RISK 3:

## Pushing Pause on Pay Equity

### WHAT YOU NEED TO KNOW:

Most companies want to be fair in everything they do, especially in compensation. **But establishing pay equity is a heavy lift that requires a deep dive into comp data, so it's easy to procrastinate.**

Federal pay equity laws have been around for decades, and proposed changes and amendments to the Equal Pay Act are becoming a hot topic at the federal level. It is important for employers to monitor the U.S. Department of Labor's (DOL) rulemaking as well. Changes in DOL interpretative guidance can have a big impact on employers nationwide. Additionally, over the past few years, states have begun to push for more progress. In September 2019, Alabama became the 49th state to adopt equal pay legislation (Mississippi is the only holdout).

**To get a sense of what's coming, look at how California revised its pay equity law.** They now require fair pay for men and women who perform "substantially similar work, when viewed as a composite of skill, effort and responsibility." California is also the first state to take the idea of equal work and expand it to include substantially similar work. That means employers must compare employees located anywhere in the state.





## WHAT YOU NEED TO DO:

**Most importantly, know your state's [pay equity laws](#).**

The deadline for submitting 2019 and 2020 EEO-1 Component 1 data is Monday, July 19, 2021.

Beyond those immediate actions, **now's the time to take the plunge into pay equity.** For one, [compensation strategy](#) is key to business success (you'll never hire the team you need, much less retain them, without a market-vetted comp plan). Second, a new era of compensation transparency is here. In 2019, Colorado passed an equal pay bill that, among other things, requires Colorado employers to list the salary range for all open jobs.



Establishing pay ranges is an [8-step process](#) that requires HR and finance leaders to share information to get a complete picture of the business.

The process will force you to align market pricing with your business strategy, dive deep into survey data and complete a market pricing exercise based on key assumptions. (No worries, we have a [two-part webinar series](#) for that.)



## RISK 4:

# Assuming the Way You Recruit Is Legal

### WHAT YOU NEED TO KNOW:

The EEOC and OFCCP ensure that companies' hiring practices do not discriminate against protected classes of applicants. If recruiters fail to abide by regulations, your company can be in big trouble, facing lawsuits, large fines and often irreparable damage to your brand.

**Another area of compliance on recruiters' checklists relates to salaries.**

Seventeen states and 20 localities have enacted laws either banning recruiters from asking applicants for salary histories and/or requiring companies to pay employees equally regardless of gender. It's important to review your recruiting practices and implement training to ensure recruiters understand and don't violate any laws.





## WHAT YOU NEED TO DO:

**Discrimination during the recruiting process is typically not intentional; it's often due to lack of training or sloppy policies.**

As the number of violations and lawsuits continue to rise, it's critical that employers educate recruiters on proper [interview procedures](#).

Recordkeeping is another matter. Collecting and retaining proper applicant data is important in case of an audit, as it's the only way to tell the "story" of each applicant's journey (e.g., did not meet basic qualification, phone screened, interviewed, offered, etc.).

## RISK 5:

# Assuming the Way You Promote Employees Is Fair

### WHAT YOU NEED TO KNOW:

Title VII of the Civil Rights Act of 1964 made discrimination on the basis of race illegal. Since then, the law has expanded to include other discrimination claims, for example, on the basis of gender, age, national origin, religion, pregnancy and disability. (And a landmark [Supreme Court ruling](#) on LGBTQ rights in 2020 continued the trend toward greater workplace protections.)

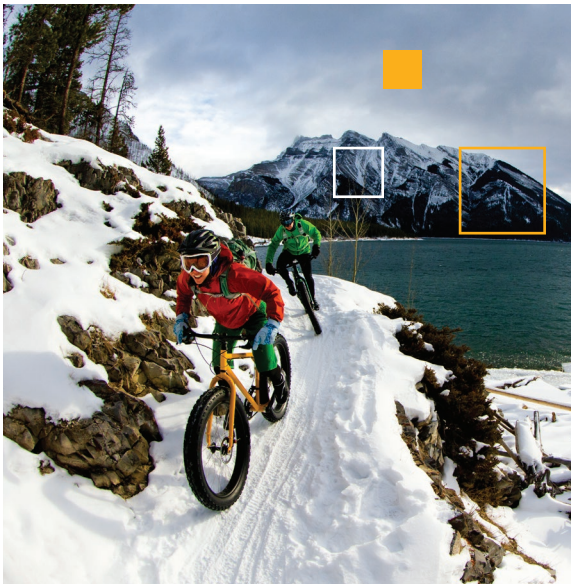
**Promotion discrimination, or wrongful failure to promote, is a type of workplace discrimination whereby an employee is passed over for promotion for an improper reason or in violation of state or federal law.**

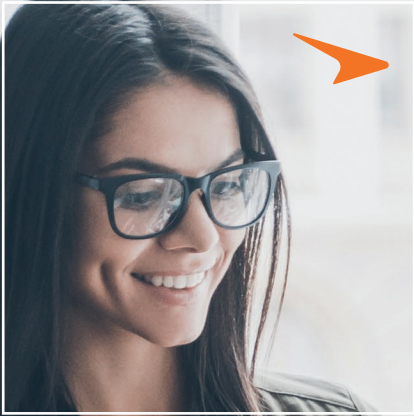
Many organizations are at risk for these kinds of lawsuits because they don't have clear and consistent promotion criteria (or even a career path framework).



## WHAT YOU NEED TO DO:

**At minimum, have a promotion policy.** Align on criteria that doesn't exclude or create barriers to protected categories of workers. Include the steps an employee takes to apply for a promotion. **Train your managers on promotion policies and guardrails for conversations with employees,** just as you train them on interviewing do's and don'ts. And be sure to document the process, including keeping records of why an employee did or didn't get promoted. Reinforce your promotion decisions with a fair, consistent and documented performance review process.





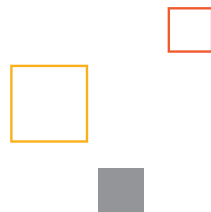
RISK 6:

## Misclassifying Workers

### WHAT YOU NEED TO KNOW:

**How to determine whether a worker is an “employee” versus an “independent contractor” continues to be a hot topic** at both the state and federal levels. The risk of misclassification can be severe. The definition of independent contractor is constantly evolving as the gig economy continues to grow and occupations such as Uber drivers that weren’t a consideration 10 years ago are now commonplace. Rules also change with new administrations. The DOL recently rescinded a proposed rule from January 2021 that would have changed the independent contractor analysis.

**If you get audited and the DOL finds that misclassification was unintentional, you’re looking at \$50 for each unfiled W-2**, 1.5% of the worker’s wages (with interest of course), 40% of the worker’s FICA contributions and 100% of the employer’s matching FICA contributions. Since you downloaded a whitepaper on compliance, we’re guessing you’re not going to intentionally misclassify workers. For those who do, the DOL can impose criminal penalties.





## WHAT YOU NEED TO DO:

Ensure you can justify employee classifications. Of course, this being life in corporate America, that's easier said than done, as the IRS admits: **“There is no ‘magic’ or set number of factors that ‘makes’ the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors that are relevant in one situation may not be relevant in another.”** (BusinessTown)

### **Fantastic. So, here's what you can do to protect your business.**

Perform an analysis for each worker. Look at not only the IRS rules for employees versus independent contractors (you don't want tax trouble) but also the federal and state factors where you have workers (you don't want a lawsuit or audit for misclassification of workers). If you have determined an individual is an independent contractor and not an employee, be sure to have a contract for each independent contractor that spells out their classification and explains that they're not eligible for benefits. And then, provide all independent contractors with Form 1099NEC as required by the IRS. Finally, review job descriptions and your [employee handbook](#) (you have one, right??) to ensure workers' roles, responsibilities and titles are consistent.



## RISK 7:

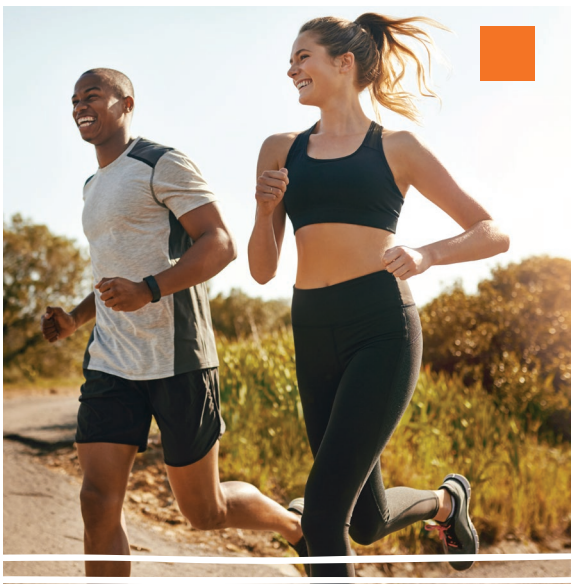
# Not Accurately Verifying Employment Eligibility

### WHAT YOU NEED TO KNOW:

I-9 audits increased by 375% in 2018. In 2019, \$14 million in fines were issued for violations. (JD Supra). Few expect that trend to continue in a Biden administration. And that's exactly why eligibility verification is on this list. **Compliance risk seeps into an organization where you least expect it and are least prepared.**

**I-9 compliance can become a blind spot for two reasons.** One, HR leaders may not be expecting compliance enforcement. Yet, ICE officers still retain significant discretion to enforce their mission, and the department's budget, at nearly \$9 billion, gives them plenty of resources. Two, HR leaders may not be prepared. I-9s, simple in theory, are deceptively complex 2-page forms. Seventy-six percent of paper I-9s contain an error that could result in a fine ([USCIS](#)), and the average fine per form is \$1,862.





## WHAT YOU NEED TO DO:

The current I-9 form is available on the [U.S. Citizenship and Immigration Services](#) website.

**Effective April 1, 2021, the U.S. Department of Homeland Security (DHS) has again extended its remote [I-9 verification policy](#)** that defers the physical presence requirements of the employment verification process. Under a policy first introduced March 20, 2020, the requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in-person applies only to those employees who physically report to work at a company location on any regular, consistent or predictable basis. **If employees hired on or after April 1, 2021, work exclusively in a remote setting due to COVID-19-related precautions, they are temporarily exempt from the Form I-9 physical inspection requirements**, until they undertake non-remote employment on a regular, consistent or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier. The DHS announcement of the extension of its remote I-9 verification policy can be found [here](#).

**To learn more about common I-9 mistakes and how to conduct a self-audit, we recommend [Paycor's webinar](#)**, hosted by Bruce Buchanan, founding partner at Sebelist Buchanan Law PLLC. For just the facts, download our [Form I-9 checklist](#).

# How Paycor Helps



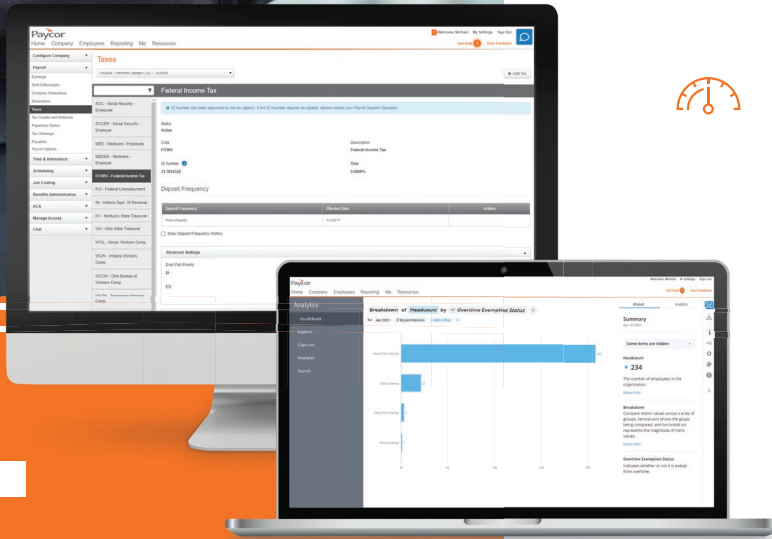
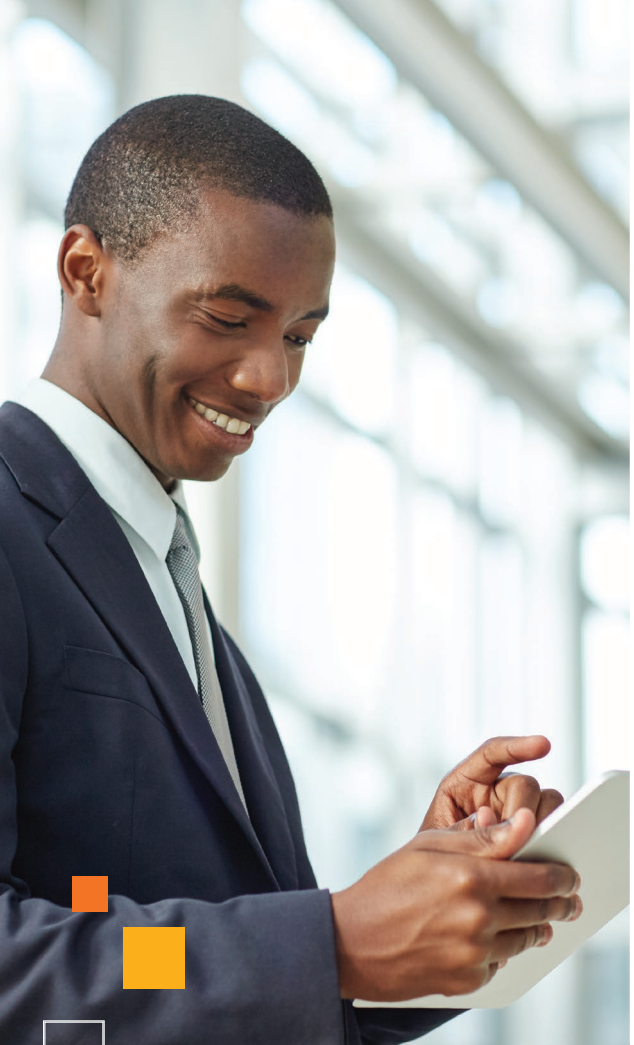
## COMPLIANCE & TAX EXPERTISE BUILT INTO THE SYSTEM

- Paycor’s tax and compliance expertise is built into our products, starting with a [unified HR platform](#) with a single source of truth for all employee data.
- All U.S. tax codes already exist within the system. You just select which ones apply to your business when you process payroll.
- Our system alerts you of changes to tax rates, tax codes and anything else you need to know.
- Paycor stays on top of employment compliance. We have [experts](#) who advise our customers and up-to-date compliance, all the way down to the local level, built into our products.
- Paycor’s [HR Center of Excellence](#) and [HR Support Center](#) keep you current on need-to-know best practices, including employment law by state, how to remove bias in interviewing, EEO protected classes and more.



## ANALYTICS THAT DRIVE DECISION-MAKING

- [Paycor Analytics](#) gives leaders actionable insights that can transform every aspect of the way you manage your teams. Leaders get the data they need to better understand and fine-tune the way they recruit, schedule, develop, promote and pay talent.





## About Paycor

Paycor builds HR software for leaders. Our Human Capital Management (HCM) platform modernizes every aspect of people management, from the way you recruit, onboard and develop people, to the way you pay and retain them. But what really sets us apart is our focus on business leaders. For 30 years, we've been listening to and partnering with leaders, so we know what you need: HR technology that saves time, powerful analytics that provide actionable insights and a Personalized Support Model. That's why more than 40,000 organizations nationwide trust Paycor to help them solve problems and achieve their goals.

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