



# *Home Health and HR Topics*

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# Important Discussion Topics

## Record keeping requirements all employers need to know

- What records should be kept?
- How long do you keep the records?

## Preparation for an FLSA Audit

- What records should be kept?
- How long do you keep the records?

## What can you do now for ACA...

# Record Keeping

## What records should be kept and for how long?

- Employment Related Documents 4 years\*:
  - Paper applications,
  - Training records,
  - Job descriptions
  - Requests for reasonable accommodation
  - Income tax withholding payments

# Record Keeping

## What records should be kept and for how long?

- Employment Related Documents 3 years\* from termination of employment.
  - Payroll records.
  - Family Medical Leave Act Records; 3 years from the date the leave ended
  - Immigration records (I-9 Forms); ·3 years after date of hire ·OR 1 year from termination of employment, whichever is later

# Record Keeping

## What records should be kept and for how long?

- Employment Related Documents 2 years\*from termination of employment.
  - Online resumes and employment applications.
  - Applicant selection criteria
  - Wage differential; Records explaining any wage differential between sexes and substantiating documents
  - Drug testing process; Records related to the alcohol and drug collection process, including, but not limited to: random selection process, documents relating to decision to administer reasonable suspicion testing and post-accident testing; test results and other violations of the act

# Record Keeping

## What records should be kept and for how long?

- Employment Related Documents 1 year\* from termination of employment.
  - EEO-1 Report: Government Contractors with over 50 employees and all employers with over 100 employees.
  - Vets 100A Reports; Government contractors with a contract amounting to \$100,000 or more entered on or after December 1, 2003 must complete.
  - Drug Test results; One year from test date

# Record Keeping

## What records should be kept and for how long?

- Employment Related Documents with varying holding time
  - OSHA 300 Reports; (Companywide report by year) Present year, plus the 5 preceding calendar years
  - OSHA 301 Reports; Present year, plus the 5 preceding calendar years
  - OSHA 300A Reports; (Employee specific injury report) Present year, plus the 5 preceding calendar years
  - OSHA Toxins Exposure Report; Duration of employment, plus 30 years

# Preparing for an FLSA Audit

- ✓ Step #1 - Understanding the audit process
- ✓ Step #2 - Understand areas of concern for potential audit

FLSA

ERISA

PPACA

- ✓ Step #3 - Prepare with an internal self audit
- ✓ Step #4 - Understand what records/documents you need
- ✓ Step #5 – Being prepared



# Understanding the Audit Process

Employers should keep in mind that the [U.S. Department of Labor](#) (DOL) can audit employers at any time, although the most common reason for a DOL audit is a complaint from an employee or ex-employee, it could be a random audit or a targeted industry audit in coordination with ICE and OSHA. To better understand the audit process and give you an idea of what to be prepared for, I have compiled a list of topics for discussion that could be included in the audit.

# Understanding the Audit Process

- The DOL typically provides little advance notice of an audit. However, you can request time to gather records. Typically, the amount of time an employer will have will depend on the auditor.
- Contact the auditor to find out specific information about the audit. Key questions to ask are the focus of the investigation (e.g., overtime pay compliance, exempt vs. nonexempt classification, minimum wage compliance), the time period for records the auditor wants to view, and the names of any employees that may be interviewed.
- Gather the records in accordance with guidance provided by the auditor. Be prepared to provide documentation related to the company compensation policies and procedures. Keep track of exactly what information was provided. Do not provide records other than what the auditor requests.
- Designate one or two company representatives to work with the auditor. Some employers choose to designate their company's legal counsel; other employers will designate senior managers. The representatives will have the duty to provide documents requested, arrange for any additional records to be provided to the auditor (if necessary) and coordinate employee interviews.
- During the audit, be courteous to and cooperative with the auditor. It is a good practice to provide a quiet area for the auditor to work in.
- At the end of the audit, ask the auditor to provide a summary of the results of the investigation. This information will help an employer review options for resolutions if any violations are found. If violations are found, employers are encouraged to consult legal counsel before any settlements are reached with the DOL.

# Fair Labor Standards Act

- 🕒 The FLSA requires that most employees in the US be paid at least the federal minimum wage and time and one-half their regular rate for hours worked beyond 40 in a workweek.
  - Non-exempt vs. Exempt
  - Independent Contractors

# Non-Exempt vs. Exempt

## 🕒 Definition of non-exempt employee

Most employees are entitled to overtime pay under the Fair Labor Standards Act. They are called non-exempt employees. Employers must pay them one-and-a-half times their regular rate of pay when they work more than 40 hours in a week. The biggest problem most employers have with nonexempt employees is miscalculating how much overtime workers are owed.

## 🕒 Definition of exempt employee

The Fair Labor Standards Act contains dozens of exemptions under which specific categories of employers and employees are exempted from overtime requirements. The most common exemptions are the white-collar exemptions for administrative, executive, and professional employees, computer professionals, and outside sales employees. There is also a lesser known exemption for certain retail or service organizations. The primary advantages of classifying employees as exempt are that you don't have to track their hours or pay them overtime, no matter how many hours they work.

# Tracking Exempt Duties

1. Current detailed records of day to day activities of exempt employees
2. Performance appraisals that ask employees to describe and assess their own performance.
3. Detailed job descriptions with responsibilities defined.

# Independent Contractors

Some of the factors to consider when deciding whether someone is an independent contractor or employee :

- who controls the manner in which the job is done?
- Who sets the worker's hours?
- Whether the work is performed on the employer's property during regular business hours?
- How long the company's relationship with the worker lasts?
- The method of payment?
- Is the work part of a company's regular business?
- Who provides the tools necessary to perform the job?

# Misclassifying Workers

## ○ **Misclassifying workers**

Incorrectly classifying workers as independent contractors can be a costly mistake. If a court decides they're really regular employees, a company can incur significant liabilities. Misclassified workers are entitled to the benefits they would have received if they had been classified correctly. This could include health insurance, retirement benefits, and stock options.

## ○ **Discrimination and harassment**

Employees, unlike independent contractors, are protected by discrimination and harassment laws, including an employer's duty to accommodate any disabilities. But, if a company's employees harass or discriminate against an independent contractor because of his race, the company can be liable under Section 1981 of the Civil Rights Act of 1866 (yes, 1866). The law protects minorities' right to enter contracts, including an independent contractor's agreement to perform work for a company.

## ○ **Overtime and minimum wage**

Employers might also have to reimburse misclassified workers for wages they should have paid them under the Fair Labor Standards Act (FLSA). That includes overtime and minimum wage.

## ○ **Tax ramifications for misclassifying workers**

If an independent contractor turns out to be an employee, the company might have to pay back taxes and/or penalties for federal and state income taxes, FICA, and unemployment

## I-9 Requirements

A form used to verify an employee's authorization to work in the U.S. and is required by law since 1986 for all employees providing services in the United States.

\*Every new hire and Manager is responsible for completing the Form I-9 as required by law.

\*Employer's must have a Form I-9 on file for each new employee.

### Exceptions:

\*Workers who provide contract services


\*Employees hired before 11-06-86 and still continuously employed with the same company

Dept. of Homeland Security (DHS), Dept. of Labor (DOL) and Immigration & Customs Enforcement (ICE) conduct audits of U.S. employers to enforce this program.



# I-9 Requirements

Please fill out the following form.



## Employment Eligibility Verification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-9**  
OMB No. 1615-0047  
Expires 03/31/2016

► **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.  
**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name <i>(Family Name)</i>		First Name <i>(Given Name)</i>		Middle Initial	Other Names Used <i>(if any)</i>	
Address <i>(Street Number and Name)</i>		Apt. Number	City or Town		State	Zip Code
Date of Birth <i>(mm/dd/yyyy)</i>	U.S. Social Security Number		E-mail Address		Telephone Number	

# Internal Self Audit

- **Review the differences** between state and federal laws to ensure you're complying with the stricter of the two.
- **Reread the job descriptions** of any positions that might be in question. Interview people in those jobs and their supervisors to ensure their job descriptions are accurate. Find out what the workers actually do, and check timekeeping records. Promptly correct any errors.
- **Interview exempt employees** to find out how much time they spend on duties typically done by hourly employees. If it's more than 20 percent (or in retail, 40 percent), consider reclassifying the employee as nonexempt. (There's no liability in classifying too many people as nonexempt; it's the opposite that plunges companies into hot water.)
- **Check to see that employees are performing the job as assigned** and working the hours designated by management. If they're not, insist they start doing so.
- **Train supervisors** and managers on how to determine who's exempt and who's not.
- **Check your overtime records.** If you discover unpaid overtime, pay it immediately—even if the overtime wasn't approved.
- **Review your policy manual** with an experienced employment attorney to make sure it's complete and in line with the law.

# ERISA

The person or team running the plan should know the health and/or 401K plan document inside and out. Plan operations must be in compliance with the plan document and the plan document must be in compliance with laws and regulations -- all required amendments must be made. To get prepared, you can start with a quick review of some major items, including:

- Summary-plan descriptions
- HIPAA requirement that plans inform participants about special enrollment rights
- Delayed deposits of contributions
- Participant deferrals
- Annual discrimination testing
- 5500
- Investment policy statements
- Benefit statements
- Summary annual reports

# PPACA

- ❑ Summary of benefits of coverage and uniform glossary
  - Required for any renewal since September 23, 2012. Penalties and fines can be \$1000 per employee.
- ❑ Health insurance exchange notice
- ❑ Notice describing dependent coverage enrollment opportunity age 26
- ❑ List of any participants whose coverage has been rescinded, reason, and copy of notice.
- ❑ Documents showing lifetime limits
- ❑ Documents showing annual limits
- ❑ Copies of documents for preventive services
- ❑ Copies of disclosure of Grandfathered Health Plan status

## Health Plan Audit (other)

- ❑ List of Cobra Participants and payments
- ❑ Copy of any medical loss ratio rebates and how they were applied. (MLR)
- ❑ Premium payroll deductions
- ❑ Insurance invoices, contributions, payroll records of withholdings.

## Be Prepared

1. Understand the differences between federal and state laws and ensure that the laws are correctly applied to employees.
2. Ensure that FLSA classifications are correct.
3. Keep accurate payroll records.
4. Apply policies consistently and review job descriptions
5. Make sure all records are complete and work to resolve any inconsistencies.

# ACA

## *Employee definitions*

### **ACA Definition of full-time employee:**

–Section 4980H(c)(4) defines the term *full-time employee* to mean:

- with respect to any month, an employee who is employed on average at least 30 hours of service per week

### **ACA Definition of variable hour employee:**

*The final rules, treat an employee as a variable hour employee if:*

based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours of service are variable or otherwise uncertain

### **ACA Definition of seasonal employee:**

an employee in a position for which the customary annual employment is six months or less.

## *Vendor Requirements/Software*

- Experts in ACA and can advise on best measurement method for your business
- Gives you information to manage your business, not just to fill in reports
- Captures 100% of the fields required to report
  - Explore offer of coverage records for all, not just those that enroll
- Notifications of eligibility mandates and penalty exposures
- Unlimited support and assistance
- Handles multiple classes and measurement methods
- Handles specialty classes, i.e. days worked/weeks worked





# Staff One ACA Reports

Staff One HR technology, combined with our HR services, provide the tools and expertise to help you determine which employees are eligible for coverage and ensure your company remains compliant with Affordable Care Act (ACA) regulations.

## Reports available:

### Eligibility for new hires

Determining eligibility for employees with flexible hours can be a challenging and time-consuming process. With Staff One HR eligibility reports, you can quickly and easily determine if employees meet the full-time equivalent (FTE) threshold.

### Are you a large employer?

Calculating and predicting your company's classification, specifically, if you are considered a "large employer," is a huge part of determining which ACA regulations apply to you. With Staff One HR technology, we are able to analyze your company size across any date range, so you can deliver the right benefits in compliance with ACA requirements.

### Affordability test

According to the ACA, to be considered affordable, an employee's cost of the lowest cost ACA-compliant plan available must be 9.5% or less of their annual household income. Staff One HR technology helps you ensure that you are providing one of the three approved calculation methods for affordable and compliant healthcare options.

# Staff One ACA Plan Assistance

Staff One can provide strategic solutions for determining the best plan for your home care agency based on number of eligible employees and participation.

Once a plan is chosen, Staff One will administer and provide communication to employees as well as the ACA year end reporting reviewed in previous slides.

For additional information contact [donna.meek@staffone.com](mailto:donna.meek@staffone.com)

# Contact Staff One

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