Sage HRMS

Avoiding Costly Fines: A 2013 Guide to Compliance Mandates

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Table of Contents

Introduction

For more than 30 years, Sage has been a leader in the development of Human Resource Management Systems (HRMS) software. Thousands of midsized businesses nationwide have implemented our popular Sage HRMS solutions. From those experiences, we've learned that compliance is one of the top challenges facing any human resources department. It can be difficult to stay on top of all of the state and federal workforce laws, regulations, and reporting requirements.

It's up to HR to ensure that hiring, discipline, and termination practices are compliant with the law. Otherwise, you could put your company at risk of incurring fines, penalties, and employee lawsuits. And mistakes can be costly. More than one-third of private companies surveyed by Chubb Insurance had experienced an employment-law event (EEOC charge filed or employee lawsuit), at an average cost of $74,400 per incident.

Sage created this guide to help you stay informed about the latest workforce compliance laws and regulations that may affect your organization. Staying abreast of current mandates enables you to communicate with and train management and employees so that the company is not at risk of expensive employee lawsuits. As with all issues with legal circumstances, the use of this material is not a substitute for the advice of a lawyer and when in doubt or for advice with respect to any specific human resources mandate please contact your lawyer. Additionally, this material is provided for informational purposes only and not for the purpose of providing legal advice.

Current Compliance Mandates

Sarbanes-Oxley Act of 2002 (SOX)

The Sarbanes-Oxley Act of 2002 was passed to restore public confidence in corporate governance following serious accounting scandals at large companies such as Enron and WorldCom. This law creates strict rules to ensure accurate financial reporting from public corporations and their auditors. Under Sarbanes-Oxley regulations, CEOs and CFOs must personally certify the integrity of financial reports, as well as the procedures and internal systems used to create them. Public accounting firms must also attest to the validity of the financial reports and assessments. The law allows for both executives and their accounting firms to be held criminally liable for accounting inaccuracies.

The Sarbanes-Oxley Act of 2002 (SOX) requires public companies in the U.S. to certify their internal control procedures for their corporate affairs. The most reviewed areas for a company are its information technology, financial, and accounting processes. To ensure proper standards are met, payroll procedures—since they touch each of these areas—are assessed during the SOX certification process, which includes detailed documentation of any process that results in a financial transaction. Since payroll is a financial transaction, and almost all HR activities eventually affect payroll, HR policies and practices must be part of the assessment.

Legislation and Requirements

If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Securities and Exchange Commission Public Company Accounting Oversight Board in connection with an investigation under this section, the Board may suspend or bar such person from being associated with a registered public accounting firm. The Board may also require the registered public accounting firm to end such association, suspend, or revoke the registration of the public accounting firm, and invoke such other lesser sanctions as the Board considers appropriate.

- **Title VIII: Corporate and Criminal Fraud Accountability**
  Imposes criminal penalties for knowingly destroying, altering, concealing, or falsifying records with intent to obstruct or influence a federal investigation or a matter in bankruptcy. It also imposes penalties of up to ten years in prison for failure of an auditor to maintain for a five-year period all audit or review work papers pertaining to an issuer of securities.

- **Title IX: White Collar Crime Penalty Enhancements**
  Establishes criminal liability for failure of corporate officers to certify financial reports, including maximum imprisonment of ten years for knowing that the periodic report does not comply with the act. Penalties include up to 20 years' imprisonment for willfully certifying a statement knowing it does not comply with this act.

- **Title XI: Corporate Fraud Accountability**
  Amends federal criminal law to establish a maximum 20-year prison term for tampering with a record or otherwise impeding an official proceeding. Authorizes the SEC to seek a temporary injunction to freeze extraordinary payments earmarked for designated persons or corporate staff under investigation for possible violations of federal securities law. Authorizes the SEC to prohibit a violator of rules governing manipulative, deceptive devices, and fraudulent interstate transactions from serving as officer or director of a publicly traded corporation if the person's conduct demonstrates unfitness to serve.

Enforcement Agency

The Securities and Exchange Commission Public Company Accounting Oversight Board. This board was established to oversee the audit of public companies that are subject to the securities laws and other related matters. Its purpose is to protect the interests of investors and further the public interest by preparing informative, accurate, and independent audit reports for companies the securities of which are sold to and held by and for public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

Covered Employers

Public Accounting Firms. All firms must register with the Public Company Accounting Oversight Board. Publicly Traded Companies.

Violations
Violations of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated in the same manner as a violation of the Securities Exchange Act of 1934 or the rules and regulations issued therein, consistent with the provisions of this Act. Any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations.

- **Title VIII: Corporate and Criminal Fraud Accountability**
  Impose a fine or up to 25 years of imprisonment of any person who knowingly defrauds shareholders of publicly traded companies.

- **Title IX: White Collar Crime Penalty Enhancements**
  Increases the penalties for mail and wire fraud from 5 to 20 years in prison. Increases penalties for violations of the Employee Retirement Income Security Act (ERISA) of 1974, resulting in fines up to $500,000 and ten years in prison.

- **Title XI: Corporate Fraud Accountability**
  Increases penalties for violations of the Securities Exchange Act of 1934 to up to $25 million dollars and up to 20 years in prison.

Payroll Compliance

Accurate payroll is essential for any company. Mistakes in employee pay calculations can lower employee satisfaction. Errors in government filings and tax payments can result in costly fines. In addition to Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) tax filing and reporting, you must keep detailed records about employee wages and hours to satisfy compliance with the Fair Labor Standards Act (FLSA).

Federal Insurance Contributions Act (FICA)

Legislation and Requirements
The Social Security Act of 1935 created a system of old age and survivor's insurance and, later, disability insurance (OASDI). Later amendments in 1965 were made to expand the scope of the program to include Medicare, or health insurance (HI). Social Security, disability, and Medicare are often referred to jointly as FICA. FICA records must be kept in a safe and convenient location for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. Wages and taxes are reported quarterly to the IRS on Form 941 or annually on Forms 944 or 943 (for agricultural employer). Forms W-2 and W-3 are submitted annually to the Social Security Administration; appropriate W-2 copies are also provided to employee. Taxes are deposited based on employer's deposit schedule as determined by their look-back period.

Enforcement Agency
Internal Revenue Service

Covered Employers
For FICA purposes, all employers—defined as any entity that employs one or more employees— are covered.

Violations
Employers may be subject to both civil and criminal penalties for failing to meet employment tax obligations. These obligations include the timely filing of employment tax returns, paying the tax due, and meeting deposit requirements. Penalties may be assessed for the late filing of employment tax returns, late payment of taxes shown on employment tax return, and federal interest assessed for underpayment of taxes. Additionally, criminal penalties may apply to willful failures to file, pay, or deposit employment taxes.

Federal Unemployment Tax Act (FUTA)

Legislation and Requirements
Under the Social Security Act of 1935, all states were required to establish unemployment compensation programs. To assist the states in funding these programs, the federal government enacted the Federal Unemployment Tax Act (FUTA). Subject to certain restrictions imposed by the U.S. Department of Labor, each state regulates and administers its state unemployment program independent of the federal government. For this reason, covered wages, tax rates, and workers' benefits vary from state to state. FUTA records must be kept in a safe and convenient location for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. Unemployment wages and taxes are reported annually to the IRS on Form 940. Taxes are deposited quarterly or annually based on the tax amount.

Enforcement Agency
Internal Revenue Service

Covered Employers
Employers with one or more employees who work at least some portion of a day in each of 20 weeks or pay wages of $1,500 during any calendar quarter. (Agricultural and domestic worker employers have different tests to determine liability.)

Violations
Employers may be subject to both civil and criminal penalties for failing to meet employment tax obligations. These obligations include the timely filing of employment tax returns, paying the tax due, and meeting deposit requirements. Penalties may be assessed for the late filing of employment tax returns, late payment of taxes shown on employment tax returns, and federal interest assessed for underpayment of taxes. Additionally, criminal penalties may apply to willful failures to file, pay, or deposit employment taxes.

Fair Labor Standards Act of 1938 (FLSA)

Legislation and Requirements

The Fair Labor Standards Act of 1938 regulates minimum wage, overtime pay, equal pay, and child labor. Employers are required to comply with FLSA's record-keeping requirements of maintaining records of employment and earnings; order, shipping, and billing records; additions or deductions from wages; certificates of ages; wage rate tables; and work time schedules for two years. In addition, records which show employee's name, address, sex and birth date; occupation and daily work schedule; individual contracts and bargaining agreements; sales and purchase records; regular hourly rate of pay for any week in which nonexempt person worked overtime; record of hours worked on a daily and weekly basis with total earnings due for nonexempt employees; and actual wages paid and deductions taken for three years. Employers are required to post a notice determined by the Wage-Hour Division in a conspicuous place at the worksite.

Enforcement Agency

U.S. Department of Labor Employment Standards Administration, Wage and Hour Division

Covered Employers

Enterprises with two or more covered employees and specified volume of sales must consider all employees covered. Annual sales test: $500,000. Enterprises that were covered by the Law as of March 31, 1990, but don't gross $500,000 per year continue to be subject to the to the overtime pay, child labor, and record-keeping provisions of FLSA. However, these businesses need only pay the federal minimum wage that was in effect on March 31, 1990 ($3.35 per hour), and not the most current minimum wage ($7.25 per hour, effective July 24, 2009), provided the state minimum wage is not higher. The following enterprises are covered without regard to volume of sales: hospitals and related institutions and schools, profit or nonprofit; public agencies.

Violations

Court action against an employer can be filed by the employee or Secretary of Labor Statute of limitations on enforcement for unpaid minimum wage, unpaid overtime compensation, or liquidated damages is two years for non-willful action and three years for willful action. Civil penalties of up to $50,000 can be assessed and/or imprisonment up to six months upon a second conviction. Injunctive and monetary relief for back pay and/or overtime may be assessed. Damage awards may be doubled when violations are willful.

Consumer Credit Protection Act (CCPA)

Legislation and Requirements

The Consumer Credit Protection Act protects the consumer from unfair or harsh collection practices. Title III of the CCPA specifically protects employees by restricting the amount of earnings that can be attached for the payment of creditor debts, alimony, child support, and federal debts such as defaulted student loans. No separate reporting is required; however, records must be maintained that show garnishment of individual wages did not exceed 25% of the individual's weekly earnings or the amount by which his weekly earnings exceed 30 times the federal minimum hourly wages prescribed in the Fair Labor Standards Act of 1938, whichever is less. Exceptions to this rule exist for child support and debt due for any state or federal tax.

Enforcement Agency

U.S. Department of Labor Employment Standards Administration, Wage and Hour Division

Covered Employers

All employers, regardless of the size of the employer or the extent of employer's involvement in interstate commerce.

Violations

In states where an exemption for state-regulated garnishments has been granted, the state enforces the limitations on the amount that may be garnished in a pay period, but not the restrictions on discharge from employment. Anyone who willfully violates the discharge provision is subject to criminal prosecution and a maximum fine of $1,000, imprisonment for up to one year, or both. Either an employee who has been illegally discharged or the U.S. Department of Labor may bring a court action asking for reinstatement to employment and restitution of lost wages.

Benefits Compliance

There are a myriad of compliance laws surrounding employee benefits such as retirement, medical leave, insurance plans, and healthcare.

Healthcare Reform

The Patient Protection and Affordable Care Act (PPACA), signed into law by President Obama on March 23, 2010, and the amendments made by the Healthcare and Reconciliation Act of 2010 (together, the Healthcare Act), have significant employment tax and information reporting implications. Fortunately, the requirements of the Healthcare Act are being phased in over a period of eight years, with limited provisions, such as the change in qualified dependents for medical care expenses, effective in 2010.

Of particular note are a number of new Healthcare reporting requirements that are needed to assist in the enforcement of the various health coverage requirements that will be required of individuals, employers, and insurers, with staggered effective dates beginning in 2011 and through 2014, and an additional Medicare withholding tax that takes effect in 2013.

The more immediate changes are listed here in chronological order:

Qualified dependent for medical care expenses purposes:
Under the Healthcare and Reconciliation Act of 2010, and effective in 2010, the definition of dependent child is amended to extend the general exclusion for reimbursements for medical care expenses under an employer-provided accident or health plan to any child of an employee who has not attained age 27 as of the end of the taxable year.

Reporting of cost of employer-sponsored health coverage on Form W-2:
Under the PPACA legislation, W-2 reporting of the value of health insurance sponsored by employers was to have become mandatory for 2011. However, to give employers more time to update their payroll systems, IRS Notice 2010-69, issued on November 10, 2010, made this requirement optional for all employers in 2011. IRS Notice 2011-28 provided further relief for smaller employers filing fewer than 250 W-2 forms (in the prior year) by making the reporting requirement optional for them at least for 2012 and continuing this optional treatment for smaller employers until further guidance is issued.

- Effective for plan years beginning in 2013, health flexible spending arrangements (FSA) limit annual employee contributions to $2,500. The amount is indexed to the CPI beginning in 2014. Employer contributions are not limited.

- PPACA legislation requires an employer to withhold Additional Medicare Tax on wages or compensation it pays to an employee in excess of $200,000 in a calendar year beginning with wages paid on and after January 1, 2013. An employer has this withholding obligation even though an employee may not be liable for the Additional Medicare Tax because, for example, the employee's wages or other compensation together with that of his or her spouse (when filing a joint return) does not exceed the $250,000 liability threshold. Any withheld Additional Medicare Tax will be credited against the total tax liability shown on the individual's income tax return (Form 1040) and reconciled at the time of filing.

- Starting in 2014, certain employers must offer health coverage to their full-time employees or a shared responsibility payment may apply. Information may be found in news releases IR-2011-92 and IR-2011-50 and Notices 2011-73, 2011-36 and 2012-17. Additionally, Notice 2012-58 expands upon and modifies previous guidance and describes safe harbors that employers may use to determine whether certain workers are full-time employees and to establish that coverage is affordable at least through the end of 2014. Notice 2012-59 provides related guidance for group health plans on the waiting periods they may apply before starting coverage.

Employer "Pay or Play" Mandate

In 2014, the pay-or-play mandate requires employers of 50 full-time equivalent employees or more to offer quality, affordable health insurance coverage to full-time employees (those working on average at least 30 hours per week or 130 hour per month) and their families. Failure to offer such coverage potentially subjects the employer to a penalty for a given month.

Employers who "opt out" of providing benefits

Employers who do not provide health coverage to all full-time employees (and their dependents) are penalized:

- If at least one full-time employee (30+hrs/wk or 130+ hrs/mo) is eligible for, or receives, a subsidy in a state exchange. The employer is subject to an annual penalty of $2,000 × all full-time employees (except for the first 30) applies

- Penalty is assessed monthly (that is, $167.67 per full time employee per month

Employers who provide "unaffordable" coverage

Coverage is affordable only if the premium for single coverage under the employer's lowest cost plan with at least a 60% "actuarial value" does not exceed 9.5% of household income (or W-2 wages). Annual penalty is the lesser of $3,000 for each full-time employee who receives a subsidy through a state exchange, or $2,000 multiplied by all full-time employees (subtracting the first 30). Penalty is assessed monthly (that is, $250 per subsidy-receiving full-time employee per month).

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Consolidated Omnibus Budget Reconciliation Act of 1985 provided that employees be allowed to purchase medical insurance at the employer's group health plan rate plus 2% upon occurrence of a qualified event (for instance, termination, death, or divorce). The American Recovery and Reinvestment Act of 2009 included a provision that, effective with health coverage periods beginning on and after February 17, 2009, provided a federally funded premium assistance payment of 65% of the health insurance premium for up to nine months (through December 31, 2009) to employees and their families who are otherwise eligible for health benefits continuation (assistance eligible individuals) under the Consolidated Omnibus Budget Reconciliation Act of 1985. Under the Defense Appropriations Act of 2010, Congress extended the 65% government subsidy for COBRA health payments to workers involuntarily separated through February 28, 2010, and lengthened the subsidy period to 15 months. The Continuing Extension Act of 2010 extended the 65% government subsidy for COBRA health payments to workers involuntarily terminated from employment through May 31, 2010.

Individuals who qualified on or before May 31, 2010, may continue to pay the reduced premiums for up to 15 months, as long as they are not eligible for another group health plan or Medicare. If COBRA coverage did not start until a later date due to the terms of a severance arrangement, the use of banked hours, or a similar provision, a qualified individual may still be eligible for 15 months of coverage. For example, if an individual was involuntarily terminated on May 31, 2010, and due to the terms of a severance agreement, his COBRA coverage did not start until December 1, 2010, he would still be eligible for the full 15 months of subsidy through February 29, 2012, as long as he is not eligible for another group health plan or Medicare.

The employee COBRA subsidy is reported on forms 941, 943, or 944. The Department of Labor has issued a model statement that employers can use to comply with the act's notification requirements to employees.

- **Enforcement Agency**
  U.S. Department of Labor and Internal Revenue Service

- **Covered Employers**
  Group health plans maintained by employers with 20 or more employees in the prior year. It applies to plans in the private sector and those sponsored by state and local governments. The law does not apply to plans sponsored by the federal government and certain church-related organizations.

Violations

Companies that fail to comply with notification obligations may be fined up to $110 per day (under the Employee Retirement Income Security Act) until proper notification is given to employees and are subject to an excise tax of $100 per day ($200 if more than one family member is affected by the employer's failure to comply). In addition, companies are liable for the costs of medical expenses incurred by an individual who would otherwise have been covered. "Good faith compliance" is expected of employers. If employers do not comply, they will not be allowed to claim group health plan costs as a business expense, and they will therefore not be allowed to deduct it. Highly compensated employees —who are required to list employer contributions to their health plans on their tax forms—may also be penalized if their employers do not comply with COBRA.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Legislation and Requirements

Health Insurance Portability and Accountability Act of 1996 is a federal law designed to protect the privacy of employees' and plan participants' personal health information and to ensure that it is not used improperly by employers. Under this act, group health plans and insurers are required to furnish a statement of prior health coverage, commonly referred to as a "certificate of coverage" to provide documentation of the individual's prior creditable coverage. This certificate must be provided in the following circumstances: when an individual loses coverage under the plan; when an individual becomes entitled to elect COBRA continuation coverage, at a time no later than when notice is required under COBRA; within a reasonable period of time after the plan learns that COBRA continuation coverage has ceased or after the individual's grace period for the payment of COBRA premiums ends; and upon request, before an individual loses coverage or within 24 months of losing coverage.

Enforcement Agency

U.S. Department of Health and Human Services; Attorney General's office at the state level

Covered Employers

HIPAA provisions are imposed upon group health plans and issuers. Eligibility for an individual's enrollment in a group health plan is determined according to the terms of the health plan and the rules of the issuer, but not according to an individual's health status or that of an individual's dependent. HIPAA guarantees access to health coverage for small employers. Small firms (50 or fewer employees) are guaranteed access to health insurance, and generally, no insurer can exclude a worker or family member from employer-sponsored coverage based on health status. Insurers are required to renew coverage to all groups, regardless of the health status of any member.

Violations

Except as provided in subsection (b) of the Act, the Secretary of Health and Human Services shall impose on any person who violates a provision of this part a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

Employee Retirement Income Security Act (ERISA)

Legislation and Requirements

The Employee Retirement Income Security Act of 1974 is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. ERISA requires plans to provide participants with important information about plan features and funding, provides fiduciary responsibilities for those who manage and control plan assets, requires plans to establish a grievance and appeals process for participants to get benefits from their plans, and gives participants the right to sue for benefits and breaches of fiduciary duty. Employer must preserve for six years all records containing basic information and data that could be used to verify, explain, or clarify reports or descriptions required to be filed under ERISA. All plans covered by ERISA must file financial and actuarial reports (Form 5500) with the Treasury Department on a yearly basis.

Enforcement Agency

Internal Revenue Service enforces vesting, participation, and funding requirements. The Department of Labor enforces the fiduciary requirements.

Covered Employers

All employers engaged in commerce with the exception of churches and federal, state, and local government employers.

Violations

Willful violations of ERISA can result in both criminal and civil penalties. Enforcement agencies have the right to: force plan fiduciaries to restore profits made through improper plan transactions, make good on losses, and pay civil fines; withdraw tax exemptions that such plans normally carry; and sanction employers with fines in amounts up to $500,000 and prison terms of up to ten years.

Family and Medical Leave Act of 1993 (FMLA)

Legislation and Requirements

The Family and Medical Leave Act of 1996 grants qualified employees up to 12 weeks of medical leave per year to care for themselves or qualified family members, without losing their jobs or group health benefits. The Act does not require employers to pay employees while on medical leave, but some do anyway as a voluntary employee benefit. In 2008, the FMLA was amended to provide eligible employees working for covered employers two new leave rights related to military service. The Act requires that documentation be kept to track the employee's FMLA request, dates, disposition, and so on to support that no detrimental action was taken as a result of his/her FMLA request—including Form WH-380 Certification of the Healthcare Provider and Form WH381 Employer Response to Employee Request for Family or Medical Leave. A notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees.

Enforcement Agency

U.S. Department of Labor Employment Standards Administration, Wage and Hour Division

Covered Employers

Private employers engaged in commerce or in any industry affecting commerce who employed 50 or more employees in 20 or more work weeks in the current or preceding calendar year AND public agencies, including state, local, and federal employers and local education agencies (no minimum number of employees for private elementary or secondary schools).

Violations

Department of Labor has investigatory authority to review records annually, or more often if there is reasonable cause to believe violations have occurred and to resolve complaints by employees. The Secretary of Labor and also the employee have the right to sue. Penalties include monetary damages and equitable relief including employment, reinstatement, or promotion. Violations of record-keeping or posting requirements can result in a fine of $110 per offense.

Avoiding Discrimination

Employee discrimination claims are among the most frequently filed lawsuits and the most expensive jury verdicts. Federal employment laws have been established to prohibit discriminatory practices against employees based upon their gender, race, religion, disability, and other attributes.

This is a very active area of workplace litigation. To protect your company from employee discrimination complaints and lawsuits, it is essential to conduct regular training with managers and employees about workplace discrimination and harassment and to establish formal processes for dealing with complaints and keeping records.

Americans with Disabilities Act of 1990 (ADA)

Legislation and Requirements
The Americans with Disabilities Act of 1990 is a wide-ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability.

Enforcement Agency
EEOC and/or the Department of Justice and/or the Office of Civil Rights, depending under which Title the complaint falls (Title I, Title II, or Title III)

Covered Employers

- Title I (Employment) requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.
- Title II (State and Local Government Activities) covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding.
- Title III (Public Accommodations) covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.

Violations
Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed $55,000 for a first violation or $110,000 for any subsequent violation. Remedies may include hiring, reinstatement, back pay, court orders to stop discrimination, and reasonable accommodation. Compensatory damages may be awarded for actual monetary losses and for future monetary losses, mental anguish, and inconvenience. Punitive damages may be available as well, if an employer acts with malice or reckless indifference. Attorney's fees may also be awarded.

Civil Rights Act of 1866 Section 1981

Legislation and Requirements
The Civil Rights Act of 1866 Section 1981 is a federal law in the United States that pertains to everyone born in the U.S. and not subject to any foreign power. This act prohibited employment discrimination based on race and color. Employers are required to maintain records which reflect nondiscrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of individual's race.

Enforcement Agency
Enforcement: No agency; direct court action.

Covered Employers
All private employers are covered by the 1866 Act; there is no size of business requirement, nor is there any requirement affecting interstate commerce.

Violations
Section 1981 permits victims of race-based employment discrimination to obtain a jury trial at which both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages may be awarded. Such damages may include back pay and fringe benefits the employee would have earned during the period of discrimination from the date of termination (or failure to promote), to the date of trial. Compensatory damages are allowed for future loss, emotional distress, pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life. The caps placed on compensatory and punitive damages do not apply in a Section 1981 claim.

Equal Employment Opportunity Act of 1972

Legislation and Requirements
The Equal Employment Opportunity Act of 1972 prohibits employment discrimination on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital status. Employers are required to comply with EEOC reporting requirements and maintain records of recruitment activity to demonstrate compliance with equal employment opportunity rules. Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion dismissal, or referral. Private employers with 100 or more employees or federal contractors with 50 or more employees, and private contractors or subcontractors with contracts of $50,000 or more must report annually using Form EEO-1. State and local government employers with 15 or more employees report biennially on Form EEO-4. The EEOC-approved notice summarizing the pertinent provisions of Title VII of the Civil Rights Acts of 1964 as amended must be posted in an area accessible by employees.

Enforcement Agency
Equal Employment Opportunity Commission

Covered Employers
Employers who are subject to Title VII of the Civil Rights Act of 1964

Violations
Under most EEOC-enforced laws, compensatory and also punitive damages may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against the federal, state, or local governments. The making of a false statement on the EEO-1 report is punishable by fine or imprisonment.

Civil Rights Act of 1991

Legislation and Requirements
The Civil Rights Act of 1991 amended the Civil Rights Act of 1964 to strengthen and improve federal civil rights laws, provide for damages in cases of intentional employment discrimination, and clarify provisions regarding disparate impact actions. It provided for the right to trial by jury on discrimination claims and introduced the possibility of emotional distress damages, while limiting the amount that a jury could award. Employers are required to maintain records which reflect nondiscrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of an individual's race, color, religion, sex, or national origin. The EEOC-approved notice summarizing the pertinent provisions of Title VII of the Civil Rights Act of 1964 as amended must be posted in an area accessible by employees.

Enforcement Agency
Equal Employment Opportunity Commission

Covered Employers
Private employers engaged in an industry affecting commerce with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year AND state and local governments which employ 15 or more employees or which receive revenue sharing funds.

Violations
Prior to the enactment of the Civil Rights Act of 1991, remedies under Title VII were limited largely to reinstatement, back pay, and the recovery of attorney's fees. Monetary recovery for emotional distress and punitive damages were unavailable. Under this act, victims of intentional employment discrimination may now recover compensatory and punitive damages ranging from $50,000 to $300,000 depending on size of employer, in addition to those damages already available under Title VII.

Title VII of the Civil Rights Act of 1964

Legislation and Requirements
Title VII of the Civil Rights Act of 1964 is the landmark federal employment discrimination law. It prohibits discrimination in any aspect of employment on the basis of race, color, religion, national origin, or sex. Employers are required to keep all records for one year related to applications and hirings; promotions and transfers; layoffs and terminations; pay rates and other terms of compensation; and selections for training or apprenticeship programs that will reflect nondiscrimination based on race, color, religion, sex, or national origin. Two exceptions to Title VII relate to a bona fide occupational qualification or a bona fide seniority system. The EEOC-approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees. The EEO-1 report is required by the amendment to this act; see Civil Rights Acts of 1991.

Enforcement Agency
Equal Employment Opportunity Commission

Covered Employers
Private employers engaged in an industry affecting commerce with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year AND state and local governments which employ 15 or more employees or which receive revenue-sharing funds.

Violations
Equitable remedies are provided, including injunctive relief, reinstatement, hiring, back pay, and front pay. Damages for intentional discrimination include consequential, compensatory, and punitive damages. Damages for nonmonetary losses are capped between $50,000 and $300,000 depending on the employer's size. Damages are not available for nonintentional discrimination. Compensatory and punitive damages for racial discrimination are precluded if such damages can be recovered under USC, Section 1981.

Equal Pay Act of 1963

Legislation and Requirements
The Equal Pay Act of 1963 disallows wage discrimination based on gender for all jobs that require equal skill, effort, and responsibility under similar working conditions at the same employer. Employers are required to comply with FLSA's record-keeping requirements but must also maintain records that describe or explain the basis for payment of any wage differentials to employees of the opposite sex. Such records may include job evaluations, job descriptions, merit, incentive, or seniority systems and collective bargaining agreements. The EEOC-approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees.

Enforcement Agency
Equal Employment Opportunity Commission

Covered Employers
Generally covers both private and public employers; there is no minimum number of employees established for coverage under the Act.

Violations
Enforced through civil lawsuits and jury trials. An individual's right to bring suit terminates when the EEOC commences an action to enforce the individual's rights. As provided by the Fair Labor Standards Act, civil penalties of up to $11,000 can be assessed and/or imprisonment up to six months upon a second conviction. Injunctive and monetary relief, including reinstatement, promotion, and liability for lost wages may also be assessed. Damage awards may be doubled when violations are willful.

Age Discrimination in Employment Act of 1967 (ADEA)

Legislation and Requirements
The Age Discrimination in Employment Act of 1967 prohibits age discrimination in any aspect of employment against individuals who are 40 years old or older. Employers are required to comply with FLSA's record-keeping requirements but also must maintain records which do not reflect age discrimination practices against persons 40 years and older. Such records may include privileges, compensation, terms, and conditions of employment. The Act does allow mandatory retirement of highly compensated executives or top policy makers who have reached 65 years of age and who stand to receive at least $44,000 annually in pension payments. The EEOC-approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by applicants and employees.

Enforcement Agency
Equal Employment Opportunity Commission

Covered Employers
Employers with 20 or more workers are covered if they employed that many persons for each working day in each of at least 20 calendar weeks in the current or preceding calendar year, and they are engaged in an industry affecting commerce. State and local governments must comply with ADEA requirements. However, elected public officials and certain others are generally exempt. The law contains special provisions for federal employers.

Violations
Enforced through civil lawsuits and jury trials. An individual's right to bring suit terminates when the EEOC commences an action to enforce the individual's rights. Injunctive and monetary relief includes reinstatement, promotion and liability for lost wages, and front pay. Compensatory damage awards may be doubled when violations are willful. While states are covered under the terms of the Act, the U.S. Supreme Court held that state employees may not sue their employers for alleged violations under the Act. Separate procedures also exist for federal agency employees. Damage awards may be doubled when violations are willful.

Rehabilitation Act of 1973 (Section 503)

Legislation and Requirements

Rehabilitation Act of 1973 prohibits discrimination by federal contractors and grantees against individuals with disabilities who are able to work. No specific limitation appears in the statute or its implementation regulations. However, by virtue of the OFCCP's requirement that nonexempt federal contractors/subcontractors submit affirmative action data for compliance review audits, a two-year retention period is required for maintenance of AAPs and data supporting current and prior AAPs. Records of complaints under this section must be kept for one year. Employers must post a notice of equal employment opportunity requirements in a conspicuous place.

Enforcement Agency

U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Programs

Covered Employers

Public and private contractors and subcontractors holding contracts with the federal government worth $10,000 or more. No minimum number of employees; however, 50 employees plus a contract worth $50,000 or more triggers a requirement for a written affirmative action plan to hire and advance qualified persons with disabilities.

Violations

Section 503 is enforced through administrative enforcement with resort to the courts through the Attorney General in instances where denial of further contract work might be ineffective; there is no private right of action. Enforcement through sanctions can include the following: enforcing the contractual obligation through a court order, withholding payments that are due on the contract, terminating the contract altogether, and preventing the contractor from receiving any contracts in the future.

Vietnam Era Veterans Readjustment Assistance Act of 1974

Legislation and Requirements

Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibits employment discrimination by employers with federal contracts or subcontracts of $25,000 or more and provides affirmative action programs for Vietnam-era veterans, special disabled veterans, and veterans who served on active duty during any war, campaign, or expedition for which a campaign badge was authorized.

Records must be maintained which reflect nondiscrimination in personnel practices for all veterans that served in the U.S. military who are disabled veterans, recently separated veterans (three years), Armed Forces Service Medal veterans, and other protected veterans. In accordance with Title 38, United States Code, Section 4212(d), the U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) collects and compiles data on the Federal Contractor Program Veterans' Employment Report (VETS-100 Report) from federal contractors and subcontractors who receive federal contracts that meet the threshold amount of $100,000 on or after December 1, 2003.

Prior to amendment by the Jobs for Veterans Act (JVA), the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and its implementing regulations at 41 CFR 61.250 required all contractors and subcontractors with federal contracts in excess of $25,000 to report their efforts toward hiring and employing veterans in four specified categories: veterans of the Vietnam era, special disabled veterans, other protected veterans, and recently separated veterans. JVA raised the VETS-100 reporting threshold from $25,000 to $100,000 for contracts awarded on or after December 1, 2003, and modified the report categories of veterans to: disabled veterans, other protected veterans, armed forces service medal veterans, and recently separated veterans.

Additionally, JVA will require federal contractors and subcontractors to report the total number of all current employees in each job category and at each hiring location. The EEOC-approved notice summarizing the pertinent provisions of the law including how to file a complaint must be posted in an area accessible by applicants and employees.

Enforcement Agency

U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Programs

Covered Employers

Public and private contractors and subcontractors holding contracts with the federal government worth $100,000 or more for the procurement of personal property and nonpersonal services (including construction). No minimum number of employees; however, 50 employees plus a contract worth $100,000 or more triggers a requirement for a written affirmative action plan.

Violations
Enforced through withholding of contract payments, termination of contracts, debarment from future contracts; make whole remedies, including reinstatement and back pay. Appropriated funds cannot be used for contracts with entities that do not meet the veterans' employment reporting requirements.

Executive Order 11246

Legislation and Requirements
Executive Order 11246, as amended, prohibits discrimination and requires affirmative action to ensure that all employment decisions are made without regard to race, color, religion, sex, or national origin. The EEOC-approved notice summarizing the pertinent provisions of the law must be posted in an area accessible by employees. The EO Survey is required to be filed annually for federal contractors or subcontractors which have 50 or more employees and a federal contract or subcontract worth $50,000 or more.

Enforcement Agency
U.S. Department of Labor Employment Standards Administration, Office of Federal Contract

Covered Employers
Private employers and state/local governments that have federal contracts worth more than $10,000; no minimum number of employees. Fifty employees plus a contract worth $50,000 or more triggers a requirement for a written affirmative action plan.

Violations
General enforcement of systemic discrimination which requires contractors and subcontractors to refrain from employment discrimination on the basis of race, color, religion, sex, or national origin and to take affirmative action with regard to hiring and advancement of minorities and women. Individual complaints are referred to the EEOC. Violations may result in cancellation, suspension, or termination of contracts, withholding of progress payments, debarment, and sanctions.

Other Hiring Records

In addition to the hiring records explained in previous sections, the government requires employers to keep records that help determine employee eligibility to work and locate parents who are delinquent in child support obligation.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (New Hire Provision)

Legislation and Requirements

The new-hire provision in this law established a Federal Case Registry and National Directory of New Hires to track delinquent parents across state lines. It also requires that employers report all new hires to state agencies for transmittal of new-hire information to the National Directory of New Hires. Each state may provide the time within which the required report shall be made with respect to an employee, but such report shall be made: not later than 20 days after the date the employer hires the employee; or in the case of an employer transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

Enforcement Agency

U.S. Department of Health and Human Services, Office of Child Support Enforcement; New Hire Reporting. Units at the state level.

Covered Employers

For new-hire reporting purposes, the term “employer” is the same as for federal income tax purposes and includes any governmental agency or labor organization. For practical purposes, any entity that is responsible for providing a worker with a Form W-2 must meet the new-hire reporting requirements. The following exceptions exist: Employers on Native American reservations and lands are not subject to the new-hire reporting requirements unless the tribe accepts the jurisdiction of the state for this purpose. An agency that simply places employees and is not responsible for paying the workers’ salaries is not responsible for reporting the workers as new hires.

Violations

Civil money penalties assessed on noncomplying employers as follows: The state shall have the option to set a state civil money penalty which shall be less than: $25; or $500 if, under state law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

Immigration Reform and Control Act of 1986 (IRCA)

Legislation and Requirements
This law amends the Immigration and Nationality Act to prohibit U.S. employers from hiring illegal aliens. It also prohibits employment discrimination against individuals other than illegal aliens based on citizenship status or national origin. Employers must verify the eligibility of each employee hired after November 1986 to work in the United States by completing Form I-9.

An employer must examine documents that establish the employee's identity and eligibility to work in the United States before completing this form. Section 1 must be fully completed and signed by the employee at the time of hire (first day of employment). The employee must then present the employer with original documents proving his or her assertions regarding identity and work authorization, as set forth in Section 1 of the Form I-9, within three (3) business days of commencing employment. IRCA contains antidiscrimination provisions to protect noncitizens against unlawful discrimination; thus, an employer may not refuse to consider a person for employment just because it suspects the applicant is an unauthorized alien.

An employer is required to verify an applicant's status only after an offer of employment is accepted. Every employee must complete Form I-9, which is issued by the Immigration and Naturalization Service, attesting to his or her legal status. IRCA requires an employer to keep proof of identity and authorization to work on file for three years following the first date of employment, or for one year following the termination of employment, whichever is later.

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

Covered Employers
The Immigration Reform and Control Act made all U.S. employers responsible to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986.

Violations
Hiring and recruiting violations and improper referrals may result in: a cease-and-desist order; a fine ranging from $110 to $11,000, depending on the type and number of violations; and criminal penalties, which are also available under IRCA for certain violations.

Safety Regulations

The Occupational Health and Safety Administration (OSHA) regulates workplace safety. This agency is part of the U.S. Department of Labor and seeks to reduce workplace injuries and fatalities through enforcement of safety regulations. OSHA reports that in the 35+ years since its inception, workplace fatalities decreased more than 60% and occupational injury and illness rates have fallen by 40 percent. To ensure compliance with OSHA regulations, all employers must display the OSHA poster in a prominent location, report the work-related death or hospitalization of three or more employees, and in many cases, comply with additional OSHA recordkeeping requirements.

Occupational Safety and Health Act (OSHA)

Legislation and Requirements

The Occupational Safety and Health Act requires covered employers to prepare and maintain records of occupational injuries and illnesses. Employers must preserve the following records for five years: all recordable occupational injuries and illnesses no later than six working days after receiving information that injury or illness occurred; annual summary of occupational injuries and illnesses; and any accident causing death of one or more employees or hospitalization of five or more employees, which must be reported to the area director of OSHA within 48 hours. OSHA forms 300, 300A, and 301 are used to comply with the reporting requirements. Employers must post notices that advise employees of their rights, as well as each OSHA citation the company receives.

Enforcement Agency

Occupational Safety and Health Administration

Covered Employers

Employers engaged in interstate commerce. Employers with ten or fewer employees and federal and state governments are exempt from certain requirements.

Violations

Failure to maintain required records may result in a citation and civil penalties. Employers that willfully make false statements are subject to criminal penalties, as well. If an investigation reveals unacceptable conditions, OSHA will issue a citation describing the violations and the proposed civil and/or criminal penalties. Citations may be contested before the Occupational Safety and Health Review Commission (OSHRC). An administrative law judge presides over OSHRC hearings. Awards for discrimination include reinstatement and back pay. An employer that violates the antidiscrimination provisions may be prohibited from committing future violations of these provisions and ordered to post a notice, provided by OSHA, which informs employees of its unlawful conduct. In addition, employers may be penalized with fines of up to $7,000 per violation. The Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than $70,000 but not less than $5,000 for each violation.

About Sage HRMS

An industry-leading, customizable HRMS solution, Sage HRMS helps companies optimize their HR business processes as well as maximize their Return On Employee Investment (ROEI).™ Developed by HR professionals for HR professionals, Sage HRMS delivers a tightly integrated set of comprehensive features and functionality that increases efficiency and improves productivity at every level in the organization.

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