



**HUMAN
RESOURCE
COMPLIANCE
CHALLENGES**



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WELCOME

Operating a business can be an exhilarating ride. Creating a brand, selling your products, engaging with clients, or even bringing a smile to a customer's face - these are all the exciting parts of running a business.

Contrary to these fulfilling moments, there are many challenges that employers have to navigate along with the day-to-day business operations. Legislation continues to emerge at the state and local level that only adds to the long list of existing federal compliance topics. Paper Trails has prepared this guide to help you manage HR risks in your business. Our top priority is to ensure the awareness and preparedness of our clients to meet the challenges of HR compliance.

ABOUT PAPER TRAILS



Paper Trails is a full-service, Maine-based payroll, human capital management and bookkeeping provider. From running payroll, to bookkeeping and benefit administration, Paper Trails allows you to handle the work, while we handle the paperwork. We are a local business (no 1-800 number here) with a team of knowledgeable and fun members ready and willing to assist you!



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The list of human resource compliance laws continues to grow. There are a number of federal laws that businesses must adhere to. Businesses of certain sizes must be aware of and create policies for their business to maintain compliance with legislation.

In addition to federal legislation, individual states have their own challenges for employers. While each state has specific laws for employers of different sizes, trends have begun to emerge across the country. Many states piggyback off of one another and have implemented additional human resource compliance challenges for businesses to navigate. Going forward, additional states will follow these trends and pass similar legislation. Some of these most common laws include, but are not limited to:

- Minimum wage limits
- Employee classification rules
- Blended overtime
- Remote worker compliance
- Federal HR laws
- Mandated retirement programs
- Earned paid leave
- Paid time off payout requirements
- Paid Family Medical Leave
- Tipped employee compliance

In each section of this guide, you will learn more about these compliance trends and the requirements at the state level. After the Federal compliance section, this guide focuses on the legislation as it applies to the State of Maine. If your business does not operate in Maine, be sure to check with your state for its' particular legislative compliance challenges and requirements.

Click the links throughout this guide for more information.



MINIMUM WAGE

Businesses are required to pay their non-exempt employees a certain hourly wage. The federal minimum wage is currently \$7.25 per hour. Those employees classified as "exempt" employees are required to earn a minimum salary. That salary is currently \$684 per week at the federal level. Most states have their own minimum wage requirements that are higher than the federal minimum wage.

Effective January 1st (unless otherwise noted), many states will increase their minimum wage to combat the rising cost of living around the country. States in the northeast with minimum wage increases include:

- Connecticut: Increases from \$14 to \$15 per hour
- [Maine: Increases from \\$12.75 to \\$13.80 per hour](#)
- Massachusetts: Increases from \$14.25 to \$15 per hour
- Rhode Island: Increases from \$12.25 to \$13 per hour
- Vermont: Expected to increase from \$12.55 to \$13.18 per hour

So, What Are Exempt vs Non-Exempt Employees?

Exempt and non-exempt employees are subject to different pay requirements. Exempt employees are exempt from receiving any overtime pay. Non-exempt employees must receive overtime pay for any hours worked over 40 in any given 7 day period. There are additional differences between the two that employers must know:

Types of Employees	
Exempt	Non-Exempt
Paid a salary rate	Paid a hourly rate
Must be paid at least minimum salary threshold	Must be paid at least minimum hourly rate
Must work certain jobs and perform certain duties	Can work any job
Maine 2023 salary threshold = \$796.17/week	Maine 2023 hourly minimum = \$13.80/hour

For many businesses, especially in seasonal industries, overtime is often a necessity. Generally, overtime pay is an easy figure to calculate. However, overtime calculations are not as straightforward for those employees that work multiple positions for your company at different pay rates. This is known as blended overtime.

Blended overtime is the pay an employee, who works at two or more pay rates, receives for working more than 40 hours in a given 7 day period. And just like regular overtime, blended overtime is a federal requirement. Don't forget, non-discretionary compensation, such as commissions, need to be included in blended overtime calculations.

How do we calculate blended overtime?

Let's say Julie works for a restaurant and performs multiple jobs, each with a different rate of pay:

Job Code	Hours Worked	Rate of Pay	Differential
Cashier	25	\$15/hour	\$0
Hostess	15	\$20/hour	\$5
Cook	10	\$25/hour	\$10
Total	50		

Calculate gross wages from her base pay alone. Since Julie mainly works as a cashier, this is considered her base pay. $50 \text{ hours} \times \$15/\text{hour} = \$750$.

Calculate the extra pay. This is also known as shift differential. Julie's differential is \$5 for hostessing and \$10 for cooking. $(\$5 \times 15 \text{ hours}) + (\$10 \times 10 \text{ hours}) = \175 .

Add the two amounts together and calculate the blended rate: $\$750 + \$175 = \$925$. The total pay of \$925 divided by 50 hours worked gives us the blended rate of pay: $\$925/50 = \18.50 per hour.

Calculate the blended overtime rate: $\$18.50 \text{ per hour} \times 1.5 \text{ OT rate} = \27.75 per hour .

Finally, calculate Julie's pay: $\$18.50 \text{ per hour} \times 40 \text{ hours} = \740 . $\$27.75 \text{ per OT hour} \times 10 \text{ hours} = \277.50 . $\$740 + 277.50 = \$1,017.50$

REMOTE EMPLOYEES

As the workforce continues to evolve, working remotely is only increasing in popularity. Employees are even seeking remote only positions as they look to change the pre-pandemic work standards. However, from both the employee and employer standpoint, working remotely can bring additional compliance challenges, especially if those employees are in a different state than the state that the business operates.

In order to maintain compliance, businesses should consider the following things when they have out-of-state remote workers.

Remote Worker Compliance

- ✓ Most importantly, you'll need to set up payroll tax accounts in the new state in which the employee physically works. This is the state in which you will need to use for things such as:
 - state income tax withholding
 - unemployment tax contributions
 - minimum wage laws
 - state workers compensation insurance
 - paid family leave
 - any other specific state or local tax laws
- ✓ Review the new state's new hire paperwork requirements and update the forms your business uses if necessary. Report new hires to the state within the state's specific requirements.
- ✓ Provide the employee with any required employment law posters for the new state the employee is living and working in.
- ✓ Notify your workers' compensation carrier and, if you offer it, your health insurance carrier that you have an employee working in a different state.
- ✓ Update your employee handbook with any new state laws that apply and provide the updated handbook to the employee.

There are different requirements of business as they continue to grow. Once a business reaches a certain level of employees, it takes on additional human resources responsibilities.

No matter the size of your business, you must display labor law posters in your workplace.

[Labor law posters can be downloaded here.](#)

The following employment laws are required at the federal level. Check with your city and state for additional requirements.

Employers with 1+ Employee

Fair Labor Standards Act (FLSA)

Under FLSA, employers must pay their employees at least minimum wage. This law also sets the rules around which employees are eligible for overtime and how it must be paid out.

Immigration Reform and Control Act (IRCA)

The Immigration Reform and Control Act is the law that governs employee eligibility in the United States. Employees must submit proof of identification and a complete I-9 to their employer that proves their eligibility to work in the United States.

Equal Pay Act

The Equal Pay Act requires that employers pay men and women equally for the same work performed within the same company.

Civil Rights Act and Title VI

The Civil Rights Act prohibits businesses from discrimination against employees or applicants because of race, color, gender, nationality, or religious beliefs.

Employment Retirement Income Security Act (ERISA)

Employers' private pension and health plans must give participants information around plan features, funding, and responsibilities.

FEDERAL COMPLIANCE

Employers with 1+ Employee Continued

Occupational Safety and Health Act (OSHA)

OSHA is the law that requires businesses to maintain a safe working environment for its' employees. The guidelines in which workplace injuries should be handled are laid out within OSHA.

Health Insurance Portability and Accountability Act (HIPAA)

Under HIPAA, employers and managers cannot access employee health records without the employee's consent.

Uniformed Services Employment & Reemployment Rights Act (USERRA)

Employees must be allowed reemployment for up to five years after getting called into actively military service. Also under USERRA, military veterans with disabilities must receive reasonable accommodations within the workplace.

National Labor Relations Act (NLRA)

Under this act, businesses are not allowed to prohibit or punish workers for organizing, or joining, a union. Additionally, the act describes how union and employer disputes should be handled.

Employee Polygraph Protection Act (EPPA)

According to the EPPA, with few exceptions, businesses cannot use lie detector tests on prospective or existing employees.

Employers with 15+ Employees

Americans with Disabilities Act (ADA)

Following the Americans with Disabilities Act, employers cannot discriminate against people with disabilities in areas such as employment, transportation, public accommodation, and governmental activities.

Genetic Information Nondiscrimination Act (GINA)

Under this act, employers cannot discriminate against employees or applicants because of genetic information such as genetic risk factors, family medical history, and disease susceptibility.

Employers with 20+ Employees

Consolidated Omnibus Budget Reconciliation Act (COBRA)

COBRA mandates that employers offer covered employees and their families the option to continue health insurance for 18-36 months after terminating employment.

Age Discrimination in Employment Act (ADEA)

Employees and potential candidates are protected against discrimination from employers if they are over 40 years of age.

Employers with 50+ Employees

Affordable Care Act (ACA)

Under the Affordable Care Act, companies must offer affordable health insurance to their employees. These companies are also subject to certain annual ACA reporting requirements.

Family and Medical Leave Act (FMLA)

FMLA states that employers must offer up to 12 weeks of unpaid and job-protected leave to eligible employees following the birth, adoption, or foster placement of a child or caring for a serious family illness.

Employers with 100+ Employees

Worker Adjustment Retraining Notification Act (WARN)

Under WARN, employers must provide at least 60 days advanced notification to employees if workplace closings and mass layoffs are going to occur.

EEO-1 Survey Filing (Title VII, Civil Rights Act)

Private businesses with 100 or more employees are required to report on employee demographics and compensation to the Equal Employment Opportunity Commission (EEOC).



MAINE COMPLIANCE

Now that we have looked at federal compliance topics for employers, let's focus on the legislation that Maine employers must adhere to.



Employers with 1+ Employee

Worker's Compensation Insurance

Workers compensation insurance is a program that provides benefits to your employees should they get injured on the job. Every state, with the exception of Texas, mandates that businesses purchase workers compensation insurance. Some states allow businesses to obtain their insurance through private insurers. Other states require that the workers compensation insurance be purchased through competitive state funds or monopolistic state funds.

The State of Maine requires all business with one or more employees to purchase workers compensation insurance. Maine allows employers to purchase through private companies and has strict penalties, such as a penalty of up to \$10,000, for non-compliance.

Generally, benefits received from workers compensation insurance are not taxable. Only a portion of benefits may be taxed if employees are also receiving Social Security Disability Insurance (SSDI) benefits. From a business standpoint, employers may deduct insurance premiums on their tax returns.

Unemployment Insurance

Businesses with employees are also required to pay into their State Unemployment Insurance (SUI) program as well as the Federal Unemployment Insurance Act (FUTA). These programs are there to provide benefits for a particular period of time to those individuals that are unemployed. These employee benefits are taxable.

For businesses, the amount paid into SUI depends on each business' unemployment rate. In the case of FUTA, businesses are required to pay 6% of the first \$7,000 in wages paid to each employee. Many states have a maximum tax credit of 5.4%, making businesses responsible for only 0.6% of the first \$7,000 in wages for each employee.

Employers with 5+ Employees

Maine Mandatory Retirement Program

Starting in 2023, private employers in Maine with 5 or more employees will be required to either offer a retirement program or deduct 5% of employee wages to put towards a state-sponsored Roth IRA.

Employers with 10+ Employees

Maine Earned Paid Leave

This law establishes a minimum standard for paid time off in Maine. Covered employers must meet this minimum standard, but the law does not require an employer to limit or reduce existing paid time off benefits.

Vacation Payout Law

Under this legislation, businesses must payout any unused, accrued vacation time upon cessation of employment, regardless of the reason of separation.

Employers with 15+ Employees

Maine Family and Medical Leave Act

Businesses in Maine must provide employees 10 weeks of unpaid FMLA leave over a two-year period. The Maine Family and Medical Leave Act is more restrictive than federal FMLA.

On the following pages, we will cover each of these Maine requirements in further detail.

It is critical to make sure your business follows the rules of each of the following. Doing so ensures your business will avoid potentially hefty fines levied by the Maine Department of Labor.

Update or create policies in your employee handbook to guide your employees when questions arise.



RETIREMENT PROGRAM

On June 24, 2021, Maine's government signed [An Act to Promote Individual Retirement Savings through a Public-Private Partnership](#) into law. Created to help against the growing retirement crisis in Maine and across the United States, this act makes Maine the latest state to require certain employers to either provide an employer-sponsored retirement program to their employees or provide their employees the option to contribute to a state-sponsored Roth IRA.

States that have a mandatory retirement law in place include:

- California
- Colorado
- Connecticut
- Illinois
- Maryland
- Massachusetts
- Maine
- New Jersey
- New York
- Oregon
- Washington

DETAILS OF MAINE'S RETIREMENT PROGRAM

- + Private businesses with more than 5 employees must offer an employer-sponsored plan, or enroll employees in the State's plan.
- + 5% of wages will be automatically withdrawn from each pay check and put into a Roth IRA.
- + Employees may increase or decrease this contribution rate.
- + The annual contribution rate will increase no more than 1% per year, up to a max of 8%.
- + Employees will have an opportunity to opt out.
- + Those employees that do opt out will be automatically re-enrolled with the opportunity to opt out again.
- + Employers will not be required to match employee contributions.
- + There will be per employee penalties each year for those businesses not in compliance.



People get sick and employees need time off to recover from illnesses. That is why many states have begun to require employers to offer some sort of paid time off for sick leave. Currently, 16 states have this requirement. These states include:

- Arizona
- California
- Connecticut
- Colorado
- Massachusetts
- Maine
- Maryland
- Michigan
- Nevada
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Washington

Each state has their own compliance requirements of employers based on size, industry, etc. Check your state for their specific rules.

MAINE EARNED PAID LEAVE

Maine's Earned Paid Leave law went into effect in January of 2021. Below are additional details of Maine's law.

- * Effective January 1, 2021, employers with 10 or more employees must offer earned paid leave to all employees.
- * This is 10 bodies, not 10 full-time equivalent (FTE) or any other count of employees.
- * Common ownership rules apply. Consequently, if you own two businesses with a total of more than 10 employees, you are required to offer earned paid leave to all employees of both businesses.
- * Employees may earn 1 hour for every 40 hours worked up to 40 hours per year. This is a **MINIMUM** requirement. Employers may (and many do) offer a more substantial time off package.
- * This earned time may be used for sick, vacation, personal, or emergency time.
- * Must be paid at the same rate of pay earned in the most recent payroll. This is weighted and must include “non-discretionary earnings” like commissions.

VACATION PAYOUT

While paid time off is not required by federal law, many states do require employers to offer some amount of PTO to employees. Further, many states have begun to put in place some sort of requirement for businesses to pay out this time off to their employees upon the cessation of employment. These states include:

- Alaska
- Arizona
- California
- Illinois
- Indiana
- Kentucky
- Louisiana
- Maine
- Massachusetts
- Nebraska
- New York
- Nevada
- Pennsylvania
- Rhode Island
- Tennessee
- Texas

Business size, paid time off types that need to be paid out, and deadline for payments can vary by state. Be sure to check your state for specific rules.

MAINE'S VACATION PAYOUT LAW

Below are additional details of [Maine's vacation payout law](#).

- ✔ This law is effective January 1st, 2023.
- ✔ This new requirement applies to all private businesses in Maine with more than 10 employees.
- ✔ Unused, accrued vacation time must be paid out in full no later than the employee's next payday.
- ✔ Vacation time must be paid out regardless for the reason of separation.
- ✔ The law states that this refers to vacation time only. Earned paid leave or paid time off policies are not affected by this requirement.
- ✔ Exemptions from this new law are employers with 10 or less employees, public employers, and final wage vacation pay provisions governed by a collective bargaining agreement.



Your employees may encounter a situation where they have to take time off from work to care for, or deal with, a medical situation. As an employer, are you allowed to terminate an employee after a certain period of missed time? Are you required to pay employees for this missed time?

This is where Paid Family Medical Leave comes into play. Some states have adopted a Paid Family Medical Leave program. Currently, twelve states and the District of Columbia offer, or will offer, PFML. These states are:

- California
- Colorado
- Connecticut
- Delaware
- Maryland
- Massachusetts
- New Hampshire
- New Jersey
- New York
- Oregon
- Rhode Island
- Washington

Paid Family Medical Leave provides employees with paid time away from work due to medical reasons that require a long-term absence. This leave can be taken for family reasons, such as caring for an ill family member or a new child, or medical reasons, such as a personal serious illness or injury.

Currently, Maine does not have a PFML program in place, but there is legislature being reviewed for a possible program. Below are the rules of Massachusetts PFML program, as a guide to what other state programs look like.

Massachusetts PFML

Percentage of Wages: 80% of an employee's weekly wage (up to an amount equal to 50% times the statewide average weekly wage) and 50% of a worker's average weekly wage (above an amount equal to 50% average weekly wage).

Maximum Weekly Benefit: \$1,084.31 in 2022.

Length of Benefits: Maximum of 26 weeks in any benefit year.

Eligibility: Employees already covered by Massachusetts unemployment insurance law. Employees will have to have earned at least \$5,700 during a base period of the past four completed quarters.

TIPPED EMPLOYEES

The hospitality industry is responsible for a large portion of Maine's economy. And a large portion of hospitality workers receive tipped income. There are special rules hospitality businesses must follow in regards to their tipped employees.

What is the FICA Tip Credit?

The federal tip credit allows employers that have tipped workers to pay a much lower percent, 50% in Maine (or \$6.90 per hour in 2023), of minimum wage in direct wages to its' tipped employees. Employers must prove that the employee makes at least minimum wage when direct wages and tips are combined at the end of the week. Under the federal tip credit, employers are also allowed a credit against the tips earned by the employee to make up the balance of minimum wage.

Additionally, businesses with tipped employees that earn over \$20 in tips in a month must pay taxes on the tips that those employees receive. As with all other income, employers are responsible for withholding the portion of FICA taxes on tipped income. The FICA Tip Credit allows employers to claim a credit against its' business taxes for FICA taxes paid on said tipped income.

The Tip Credit may only be taken when tipped employees perform labor that is part of their tipped occupation or doing tasks that “directly support” tip-producing work. Simply, employees **MUST** be doing service or tipped related work for an employer to use the credit.



So, what about tip pooling?

Tip pooling can occur for all restaurant staff, including those who do not normally receive tips (cooks, dishwashers, etc), only if all members of staff are paid at least the full minimum wage. Employers can not use the tip credit in this case.

* Employers, managers, and supervisors are also not eligible to participate in the tip pooling. *

Employers, managers, and supervisors are only allowed to retain the tips that they “solely and directly” earned by performing tipped related work.

According to the DOL, a manager or supervisor is considered anyone:

- 1 whose primary duty is the management of the entire enterprise, a subdivision, or a department.
- 2 who regularly directs the work of at least two other employees.
- 3 who has the right to hire or fire other employees.

Do tipped employees receive overtime pay?

Yes, tipped employees must be paid overtime for any hours worked over 40 in any given 7 day period. The federal tip credit may also be used when tipped employees enter overtime.

FOR EXAMPLE:

Maine 2023 Minimum Wage = \$13.80 per hour

Tipped Wage = \$6.90 per hour

Overtime wage: $\$13.80 \times 1.5 = \20.70

Less Tip Credit (minimum wage - tipped wage) = \$6.90

$\$20.70 - \$6.90 = \$13.80$ per overtime hour for tipped employees.

HOW WE CAN HELP

At Paper Trails, we have the **tools and knowledge** necessary to assist your business in maintaining compliance with federal and state compliance requirements. Whether you are running a one employee operation or a 500+ employee corporation, Paper Trails is here to help your business thrive.

If you need assistance maintaining compliance with your remote employees, the FICA Tip Credit is giving you a headache, or you are looking for a recommendation for a local financial advisor to help get your business in line with the Maine Retirement Program requirements, contact us today!

Collaboration is the best way to provide our clients with the full support they expect.

Our Services

- ✓ PAYROLL AND TAX COMPLIANCE
- ✓ TIMEKEEPING AND ATTENDANCE
- ✓ APPLICANT TRACKING AND ONBOARDING
- ✓ BENEFITS ADMINISTRATION
- ✓ HUMAN RESOURCE MANAGEMENT AND COMPLIANCE
- ✓ EXPENSE MANAGEMENT
- ✓ BOOKKEEPING



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