

Best of 2023:
HR Checklists



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Introduction

Compliance is one of the most complicated burdens that organizations must handle. HR professionals must be familiar with many employment laws, such as the Family Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act, the Fair Labor Standards Act and the Americans with Disabilities Act, as well as regulations and requirements for terminating employees, hiring out-of-state workers and completing Form I-9 internal audits. Smooth and effective processes can help ensure HR professionals comply with relevant laws and regulations and that tasks are well-ordered. The following checklists can assist HR professionals in developing and maintaining effective processes and help organizations remain compliant.

The following checklists are not an all-encompassing list of compliance topics but rather subjects relevant to organizations in 2023. These checklists are intended to be used as guides, and the steps in these lists should be modified to meet the unique needs of your organization. Due to the complexities of the subjects, organizations are encouraged to seek legal counsel to discuss and address specific issues and concerns.

CHECKLIST | COMPLYING WITH THE FMLA

Presented by EBMG

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for certain family and medical reasons. In addition to providing eligible employees with leave for qualifying reasons, covered employers must maintain employees' health benefits during leave and restore employees to their same (or equivalent) jobs after leave.

This checklist outlines key steps for employers to comply with the FMLA. Keep in mind that complying with the FMLA may involve additional steps depending on the facts of a specific situation. Also, many states (and some localities) have their own family and medical leave laws that provide broader leave protections to employees. Employers will need to comply with the FMLA and any applicable state and local leave laws.

General Requirements

Covered Employers	Yes	No
<p>Is your company subject to the FMLA? Select "yes" if your company is any of the following:</p> <ul style="list-style-type: none"> • A private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year; • A public agency (including state and local governments and governmental agencies) of any size; or • A public or private school (elementary or secondary) of any size. 	<input type="checkbox"/>	<input type="checkbox"/>

FMLA Requirements	Complete
<p>Display the FMLA poster in plain view where employees and applicants can readily see it. A model poster is available from the U.S. Department of Labor (DOL). Employers may use the model poster, create their own poster or use another format, as long as it provides all of the information in the model poster and meets all of the posting requirements.</p>	<input type="checkbox"/>
<p>If your company has employees eligible for FMLA leave, provide employees with a general notice about the FMLA in the employee handbook or other written materials about leave and benefits. Employers can use the text from the DOL's model poster for this notice or another format as long as it provides all of the information in the model poster.</p>	<input type="checkbox"/>
<p>Create and maintain records related to FMLA compliance (e.g., copies of FMLA notices and dates of FMLA leave). These records must be kept for at least three years.</p>	<input type="checkbox"/>

FMLA Administration	Complete
<p>Select the 12-month period used for calculating FMLA leave (or the “leave year”) and confirm that it is accurately described in employee communications.</p> <p>An employer’s options for the leave year are:</p> <ul style="list-style-type: none"> • The calendar year (Jan. 1 through Dec. 31) • Any fixed 12-month period, such as a fiscal year or a leave year beginning on the first day of an employee’s employment • A 12-month period measured forward from the first date an employee takes FMLA leave • A rolling 12-month period measured backward from the date an employee uses FMLA leave 	<input type="checkbox"/>
<p>Implement a method for tracking employees’ use of FMLA leave throughout the year, including leave taken on an intermittent or reduced schedule basis.</p>	<input type="checkbox"/>
<p>Train managers on FMLA compliance, including how to identify leave requests that may be for FMLA qualifying reasons and the law’s prohibitions on interference and retaliation.</p>	<input type="checkbox"/>
<p>Download and use the DOL’s model forms for administering FMLA leaves or create your own versions of these forms.</p> <p>The DOL’s model FMLA forms are available here</p>	<input type="checkbox"/>
<p>Determine how employees will pay health plan premiums during unpaid FMLA leave and communicate this method to employees taking leave.</p>	<input type="checkbox"/>
<p>Review how taking FMLA leave may relate to other types of employee absences, including employer-provided paid time off, short-term disability, workers’ compensation and local paid leave law requirements, and run leaves concurrently when possible.</p>	<input type="checkbox"/>

Administering FMLA Leave

Employee name	
Date of leave request	
Dates of anticipated leave	

Employee Eligibility	Yes	No
<p>Is the employee eligible for FMLA leave?</p> <p>To be eligible for FMLA leave, an employee must satisfy ALL of the following criteria:</p>	<input type="checkbox"/>	<input type="checkbox"/>

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Employee Eligibility	Yes	No
<ul style="list-style-type: none"> The employee works for an employer covered by the FMLA; The employee has worked for the employer for at least 12 months as of the date leave is to start (it does not need to be consecutive); The employee has at least 1,250 hours of service for the employer during the 12-month period before the leave is to start; and The employee works at a location where the employer has at least 50 employees within 75 miles of that worksite. 		
<p>Is the employee’s leave for a qualifying reason? Is the leave for one of the following FMLA-qualifying reasons?</p> <ul style="list-style-type: none"> The birth of a child and to bond with the newborn child within one year of birth The placement of a child for adoption or foster care and to bond with the newly placed child within one year of placement A serious health condition that makes the employee unable to perform the functions of their job To care for the employee’s spouse, child or parent who has a serious health condition Any qualifying exigency arising out of the fact that the employee’s spouse, child or parent is a military member on covered active duty (or call to covered active duty status) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the servicemember 	<input type="checkbox"/>	<input type="checkbox"/>
<p>If the employee has already used FMLA leave this year, does the employee still have FMLA leave available? Eligible employees are entitled to take up to 12 weeks of FMLA leave during a 12-month period (26 weeks to care for a covered servicemember).</p>	<input type="checkbox"/>	<input type="checkbox"/>

Leave Process	Complete
<p>Provide the Notice of Eligibility and Rights & Responsibilities within five business days of the employee’s request for leave, unless there are extenuating circumstances. The DOL has a model notice (Form WH-381, Notice of Eligibility and Rights & Responsibilities) that employers may use for this notice requirement.</p>	<input type="checkbox"/>
<p>If a medical certification is required for the requested leave, give the appropriate form to the employee and provide the employee with 15 calendar days to return the form. An employer may require a medical certification when leave is requested for the employee’s own serious health condition or the serious health condition of a family member. Employers can also require certification for military family leave. The DOL has model forms that</p>	<input type="checkbox"/>

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Leave Process	Complete
<p>employers may use for obtaining certifications. An employee requesting leave should be informed of this requirement, and the appropriate certification form should be provided with the Notice of Eligibility and Rights & Responsibilities.</p>	
<p>Grant or deny the FMLA leave by providing the Designation Notice on a timely basis.</p> <p>This notice must be provided once the employer has enough information to determine if the employee’s requested leave qualifies as FMLA leave, as follows:</p> <ul style="list-style-type: none"> • If a medical certification is not required for the requested leave, provide the Designation Notice within five business days of the leave request • If a medical certification is required, provide the Designation Notice within five business days of when the employee submits a complete and sufficient certification form. The Designation Form can also inform the employee that the certification is incomplete or insufficient and additional information is needed. <p>The DOL has a model Designation Notice (Form WH-382) that employers may use.</p>	<input type="checkbox"/>
<p>During leave, maintain coverage under the group health plan on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.</p> <p>During the FMLA leave period, an employee must continue to pay whatever share of group health plan premiums the employee paid prior to FMLA leave. The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.</p>	<input type="checkbox"/>
<p>If applicable, the employee must provide a fitness-for-duty certification to show that they can resume work after taking a leave for their own serious health condition.</p> <p>Employers may have a uniform policy requiring all similarly-situated employees who take leave for serious health conditions to provide a fitness-for-duty certification.</p>	<input type="checkbox"/>
<p>Restore the employee to the same job (or an equivalent job) at the end of the leave.</p>	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company’s compliance with the FMLA. For assistance, contact EBMG.

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CHECKLIST | OFFBOARDING: INVOLUNTARY TERMINATIONS

Presented by EBMG

Ending an employment relationship can be difficult. Involuntarily terminating an employee can be not only uncomfortable and emotional but also logistically complicated and full of legal risks. Organizations must complete a great deal of work in a short time frame to offboard a terminated employee. For example, there are many administrative tasks your organization needs to finish prior to the end of the employee’s last day, such as compiling appropriate supporting documentation, finalizing payroll and tax paperwork, retrieving company property, terminating access to systems and files, and drafting separation agreements.

An effective offboarding process can help ensure your organization complies with relevant laws and regulations and that necessary tasks are completed in an orderly manner. When done successfully, offboarding can protect your organization from potential liabilities.

Overview

With voluntary terminations, the offboarding process starts when an employee provides verbal or written notice that they are ending their employment. However, the offboarding process for involuntary terminations generally begins when an organization decides to terminate an individual’s employment. There are many reasons an organization may decide to involuntarily terminate an employee, including misconduct, performance issues or layoffs. These factors may impact the offboarding process and compliance with applicable laws.

This checklist is intended to be used as a guide, so not all of the following steps are necessary to offboard an employee. The offboarding process may differ based on your organization’s size and other factors; thus, the steps in this list should be modified to meet the unique needs of your organization. Due to the complexities of terminating an employee, including the many applicable federal, state and local laws, employers are encouraged to seek legal counsel to discuss and address specific issues and concerns. This checklist can be referenced by a supervisor, manager or HR representative to help ensure key steps are not missed for all involuntarily terminated employees.

Initial Steps	
Discuss the organization’s decision to terminate the departing employee with relevant individuals—such as the leadership team and HR—and potentially with legal counsel to ensure the termination is warranted and complies with federal and state laws.	<input type="checkbox"/>
Document any performance issues, warnings, policy violations and disciplinary actions pertaining to the departing employee.	<input type="checkbox"/>
Notify all relevant individuals—such as the leadership team, HR and IT—that the offboarding process is starting for the departing employee.	<input type="checkbox"/>
Ask HR to prepare the departing employee’s final paycheck and all necessary paperwork, including the termination letter, nondisclosure and noncompete agreements, explanation of benefits, COBRA notice and unemployment insurance, if applicable.	<input type="checkbox"/>

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Create and document a transition plan for the departing employee.	<input type="checkbox"/>
Schedule a separation meeting with the departing employee.	<input type="checkbox"/>
Ask HR or another qualified individual to conduct a separation meeting with the departing employee and to document what is discussed during the meeting.	<input type="checkbox"/>
If necessary, decide which employees will assume the departing employee's responsibilities.	<input type="checkbox"/>
Create a list of all devices and equipment—including keys, badges, access cards, credit cards and uniforms—to collect from the departing employee.	<input type="checkbox"/>
Create a list of all systems, software, apps and files the departing employee can access.	<input type="checkbox"/>
Begin recruiting to fill the departing employee's position, if necessary.	<input type="checkbox"/>

Separation Meeting

Notify the departing employee of the organization's decision to end their employment and consider explaining the reasons for the termination.	<input type="checkbox"/>
Provide the departing employee with information regarding any final payments, including paychecks, bonuses or severance payments, as well as any other exit documentation, if applicable.	<input type="checkbox"/>
If applicable, review when and how the departing employee's group health benefits will end, and inform the departing employee that COBRA election paperwork has been or will be mailed to them.	<input type="checkbox"/>
Provide the departing employee with information about state unemployment benefits.	<input type="checkbox"/>
Notify the departing employee of any post-employment legal obligations—such as noncompetition and confidentiality agreements—if applicable.	<input type="checkbox"/>
Provide the departing employee with separation, severance, nondisclosure and noncompete agreements, if applicable.	<input type="checkbox"/>
Notify the departing employee that their access to all of the organization's systems, software, apps and files will be revoked.	<input type="checkbox"/>
Ask the departing employee to return all work-related documents and other information.	<input type="checkbox"/>
Collect all company devices, equipment and passwords from the departing employee.	<input type="checkbox"/>
If the departing employee uses their personal devices for work, remove all files and access from their devices.	<input type="checkbox"/>
Ensure the departing employee provides their current contact information.	<input type="checkbox"/>

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Have the individual conducting the separation meeting walk the departing employee from the organization’s premises. If necessary, escort the employee from the organization’s premises with security in alignment with the organization’s policies.	<input type="checkbox"/>
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Following the Separation Meeting

Notify the departing employee’s team, the wider organization and clients, if applicable, of the employee’s departure and last day.	<input type="checkbox"/>
Schedule a meeting with any employees assuming the departing employee’s responsibilities to transfer all necessary information and duties.	<input type="checkbox"/>
Provide vendors, clients and other employees with an updated point of contact for the departing employee’s responsibilities, if applicable.	<input type="checkbox"/>
Schedule meetings with the departing employee’s vendors, clients and others to transition to the organization’s new point of contact, if necessary.	<input type="checkbox"/>
Remove the departing employee’s access to all systems, software, apps and files. If the departing employee works remotely, terminate their VPN and remote desktop access, if applicable.	<input type="checkbox"/>
Retain and store records in compliance with the organization’s retention policies and any legal requirements, including any human resource information system or human capital management profiles, if applicable.	<input type="checkbox"/>
Reset all system, software, software, app and file access for the departing employee.	<input type="checkbox"/>
Deactivate the departing employee’s profiles on all systems, software and apps where appropriate.	<input type="checkbox"/>
Forward the departing employee’s emails, telephone calls, voicemails and any other communications to other employees assuming the departing employee’s responsibilities.	<input type="checkbox"/>

Final Steps

Update the departing employee’s contact information.	<input type="checkbox"/>
Update all organizational charts.	<input type="checkbox"/>
Update the organization’s insurance provider of the employee’s departure, if applicable.	<input type="checkbox"/>
Process the departing employee’s final payments in a timely manner.	<input type="checkbox"/>
Discuss information gathered from the departing employee’s separation meeting with relevant individuals—such as the leadership team, HR, managers, supervisors and legal counsel—and determine any action items.	<input type="checkbox"/>
Clean the departing employee’s office or desk area and prepare it for another employee.	<input type="checkbox"/>

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Involuntary offboarding is a necessary practice that can help to ensure your organization does not miss key steps. It can also improve operational and administrative efficiency to save your organization time and money and reduce potential legal liabilities. A successful offboarding process requires the same amount of effort as onboarding, but it can create a well-ordered exit and protect your organization.

For more information about offboarding, contact EBMG today.

CHECKLIST | COMPLYING WITH COBRA

Presented by EBMG

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires covered group health plans to offer continuation coverage to employees, spouses and dependent children when coverage would otherwise be lost due to certain specific events.

This checklist outlines key steps for administering COBRA coverage. Keep in mind that administering COBRA coverage can be complex and may involve additional steps depending on the details of specific situations. Also, many states have their own continuation coverage requirements for fully insured group health plans, which are often referred to as “mini-COBRA” laws. Employers will need to comply with COBRA and any applicable state continuation coverage laws.

General Requirements

General COBRA Compliance	Complete
<p>Identify group health plans that are subject to COBRA</p> <p>In general, COBRA applies to group health plans maintained by private-sector employers with at least 20 employees on more than 50 percent of typical business days in the previous calendar year. This includes, for example, fully insured health plans, self-insured health plans, level funded health plans, dental and vision plans, health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs)</p> <p>Note that COBRA does NOT apply to health plans maintained by small employers (fewer than 20 employees) or churches, although state continuation coverage requirements may apply to these plans.</p>	<input type="checkbox"/>
<p>Download the Department of Labor’s (DOL) model forms for administering COBRA or create your own versions of these forms. If you are using the DOL’s model forms, confirm you are using the most up-to-date versions.</p>	<input type="checkbox"/>
<p>Provide the COBRA General Notice to each covered employee (and spouse, if applicable) within 90 days after health plan coverage begins.</p>	<input type="checkbox"/>
<p>Establish internal procedures for administering COBRA coverage, including procedures for Qualified Beneficiaries to provide COBRA notices and make premium payments.</p>	<input type="checkbox"/>
<p>Provide Qualified Beneficiaries who are receiving COBRA coverage with the same benefits, choices and services that similarly situated participants receive, including the right to choose between coverage options during an open enrollment period.</p>	<input type="checkbox"/>
<p>Create and maintain records related to COBRA compliance, including records of all COBRA-required notices.</p>	<input type="checkbox"/>

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Administering COBRA

Basic Information	
Names of Qualified Beneficiaries	
Type of Qualifying Event	Termination of employment (18 months) <input type="checkbox"/>
	Reduction of hours (18 months) <input type="checkbox"/>
	Divorce or legal separation (36 months) <input type="checkbox"/>
	Employee's death (36 months) <input type="checkbox"/>
	Covered child's loss of eligibility (36 months) <input type="checkbox"/>
	Entitlement to Medicare (36 months) <input type="checkbox"/>
Date of Qualifying Event	
COBRA Start and End Dates	

COBRA Coverage	N/A	Yes/Complete	Date
<p>Notice of Qualifying Event received from Qualified Beneficiary (if applicable)</p> <p>Qualified Beneficiaries are required to notify the plan when the Qualifying Event is a divorce or legal separation or a covered child's loss of eligibility.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>COBRA Election Notice sent to Qualified Beneficiary</p> <p>This notice must be provided within 14 days of receiving notice of the Qualifying Event. For Qualifying Events that do not require notice from the Qualified Beneficiary (termination of employment, reduction in hours, employee's death or employee's entitlement to Medicare), the Election Notice generally must be provided within 44 days of the date of the Qualifying Event or the date the Qualified Beneficiary would otherwise lose coverage, whichever is later.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Notice of COBRA unavailability sent (when a request for COBRA coverage is denied)</p> <p>The notice must be provided within 14 days after the request for COBRA continuation coverage is received, and it must explain the reason for denying the request.</p>	<input type="checkbox"/>	<input type="checkbox"/>	

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COBRA Coverage	N/A	Yes/Complete	Date
<p>Completed COBRA Election Notice received from Qualified Beneficiary At a minimum, each Qualified Beneficiary must be given at least 60 days to elect COBRA coverage.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Initial COBRA premium received Qualified Beneficiaries cannot be required to pay a premium at the time they make the COBRA election. Plans must provide at least 45 days after the election for an initial premium payment to be made.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Establish deadline and grace period for subsequent premium payments Health plans may establish due dates for premiums after the initial premium payment. Plans must provide a minimum 30-day grace period for each payment.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Provide notice of premium shortfall (if applicable) A premium payment that is short by an insignificant amount will be deemed to satisfy the Qualified Beneficiary’s payment obligation unless the plan notifies the Qualified Beneficiary of the shortfall and grants a reasonable amount of time to correct the deficiency. For this purpose, 30 days after the notice is provided is considered a reasonable amount of time.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Covered employee’s Medicare entitlement before a Qualifying Event that is a termination of employment or reduction in hours and extension of COBRA coverage (if applicable) An employee’s entitlement to Medicare can extend the maximum COBRA coverage period for covered spouses and dependents if the employee has a termination or reduction in hours within 18 months after becoming entitled to Medicare. Under this rule, covered spouses and dependents are entitled to COBRA coverage for the longer of: 18 months from the date of the employee’s termination or reduction in hours; or 36 months from the date the employee became enrolled in Medicare.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Notice of disability determination received and COBRA coverage extended (if applicable) Where the Qualifying Event is a termination of employment or a reduction in hours and a Qualified Beneficiary is determined by the Social Security Administration to be disabled before, at or within 60 days of the date of the Qualifying Event, all Qualified Beneficiaries within that family are entitled to COBRA for a maximum period of 29 months. In</p>	<input type="checkbox"/>	<input type="checkbox"/>	

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COBRA Coverage	N/A	Yes/Complete	Date
<p>general, the time limit for providing this notice cannot be shorter than 60 days.</p>			
<p>Notice of second Qualifying Event received and COBRA coverage extended (if applicable) The maximum COBRA period may be extended for spouses and dependent children when a Qualifying Event that is a termination of a covered employee’s employment or a reduction of hours (both of which trigger an 18-month maximum COBRA period) is followed by a second Qualifying Event that has a 36-month maximum coverage period. In general, the time limit for providing this notice cannot be shorter than 60 days.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Qualified Beneficiary begins coverage under another group health plan (or Medicare) after electing COBRA (if applicable) COBRA coverage may be terminated earlier than the end of the maximum coverage period if a Qualified Beneficiary obtains coverage under another group health plan or enrolls in Medicare after electing COBRA coverage.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Notice of early termination of COBRA coverage sent (if applicable) When a group health plan terminates COBRA coverage early, the plan must give the Qualified Beneficiary a notice of early termination. The notice must be provided as soon as practicable following the decision to terminate coverage early.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>COBRA coverage exhausted (maximum coverage period expires) The maximum coverage period is 18, 29 or 36 months, depending on the Qualifying Event(s) and whether there is a disability determination. COBRA does not require the plan to notify the Qualified Beneficiary when the maximum coverage period is about to expire, although employers may decide to provide this notice to help Qualified Beneficiaries plan ahead.</p>	<input type="checkbox"/>	<input type="checkbox"/>	

Use this checklist as a guide when reviewing your company’s compliance with COBRA. For assistance, contact EBMG.

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CHECKLIST | FORM I-9: INTERNAL AUDIT

Presented by EBMG

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or authorized foreign nationals. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9). Employers must have a completed Form I-9 for every employee hired after Nov. 6, 1986.

Complying with Form I-9 requirements accurately and in a timely manner is difficult. The risk employers face for any errors is real and can be extremely expensive. Employers that fail to comply with Form I-9 requirements can face severe consequences, including civil and criminal penalties.

Despite employers' best efforts, compliance with Form I-9 requirements can be complex and is rarely foolproof. Though they can be time-consuming and labor-intensive, internal audits can be a systematic means for organizations to ensure compliance with federal law.

Overview

This checklist outlines the steps for conducting an internal audit of your organization's Forms I-9. This checklist is intended to be used as a guide, and not all of the following steps are necessary for an organization's internal audit. The audit process may differ based on your organization's size and other factors; thus, the steps in this list should be modified to meet the unique needs of your organization. This checklist is to be completed by someone trained in Form I-9 requirements, such as an HR representative, to help ensure a smooth audit process. It has been updated to reflect the most current Form I-9 (edition date Aug. 1, 2023).

This checklist provides an overview of a Form I-9 internal audit and should not be construed as legal advice. Due to the complex nature of Form I-9 compliance, employers are encouraged to seek legal counsel to discuss and address specific issues and concerns.

Preparing for the Internal Audit	
Obtain a copy of the U.S. Citizenship and Immigration Services' (USCIS) Handbook for Employers M-274 to reference, if necessary.	<input type="checkbox"/>
Download the current version of Form I-9 from USCIS' website.	<input type="checkbox"/>
Create a list of currently employed employees hired after Nov. 6, 1986.	<input type="checkbox"/>
Create a list of all employees terminated in the past three years.	<input type="checkbox"/>
Gather Forms I-9, either original or electronic, for all current employees and employees terminated in the past three years.	<input type="checkbox"/>
Verify there is a completed Form I-9 for all current employees.	<input type="checkbox"/>
Complete Form I-9 for any current employees who do not have a completed form.	<input type="checkbox"/>

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After gathering completed Forms I-9 and creating employee lists, employers can proceed with their internal audit by following the steps below. An internal audit may differ based on an organization’s size and other factors. For smaller employers, it may be best to review every Form I-9. But for larger employers, this may not be practical. Accordingly, if larger employers decide not to review every Form I-9 and review only a sample of its forms instead, they need to ensure the criteria they use to select which forms will be audited are not discriminatory.

Reviewing Section 1 of Form I-9	
Ensure the employee’s name—including past or present last names—address and date of birth are completed.	<input type="checkbox"/>
Verify that the appropriate citizen or immigration status box is checked.	<input type="checkbox"/>
If the employee is a lawful permanent resident, confirm the employee has provided their seven- to nine-digit Alien Registration Number or USCIS Number.	<input type="checkbox"/>
If the employee lacks permanent legal status, verify the employee has provided an Alien Registration Number, USCIS Number, Form I-984 Admission Number or foreign passport number.	<input type="checkbox"/>
Verify that the employee signed and dated Section 1 no later than the first day of their employment.	<input type="checkbox"/>
If someone other than the employee completed Section 1, ensure Supplement A, Preparer and/or Translator Certification, for Section 1 is completed.	<input type="checkbox"/>

Reviewing Section 2 of Form I-9	
Verify that the citizenship or immigration status number is consistent with the information the employee provided in Section 1.	<input type="checkbox"/>
Ensure one document from List A or a combination of one document from List B and List C are listed in Section 2 and all information is recorded accurately.	<input type="checkbox"/>
Check that all documents for Section 2 have been entered under the correct list.	<input type="checkbox"/>
Confirm the employee’s first date of employment is entered and accurate.	<input type="checkbox"/>
Ensure the organization’s representative has signed and printed their name and dated the form within three days of the employee’s first day of employment.	<input type="checkbox"/>
Confirm the organization’s name and full address are recorded.	<input type="checkbox"/>
Verify there are copies of the employee’s documents if the organization retains photocopies of employee documents.	<input type="checkbox"/>

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Reviewing Supplement B (Formerly Section 3) of Form I-9	
If the employee was rehired within three years of the date of the previously completed Form I-9, verify that a block in Supplement B is completed, along with the name of the organization's representative, signature and title who completed Supplement B.	<input type="checkbox"/>
If the employee's work authorization has expired, verify that a block in Supplement B is completed, along with the name of the organization's representative, signature and title who completed Supplement B.	<input type="checkbox"/>
Enter the employee's new name in a block of Supplement B if the employee's name has changed.	<input type="checkbox"/>

Correcting Errors	
For any errors discovered in Section 1, ask the employee to correct the errors by drawing a line through the incorrect information, entering the correct information, and initialing and dating the correction.	<input type="checkbox"/>
For any errors discovered in Section 2 and Supplement B, draw a line through the incorrect information, enter the correct information, and initial and date the correction.	<input type="checkbox"/>
For forms with multiple errors, complete the section containing multiple errors on a new Form I-9 using the current version of the form. Attach the newly completed form to the original form and include a memo describing any changes and explaining why a new form was completed.	<input type="checkbox"/>
For employees who do not have a completed Form I-9, ask the employee to complete Section 1, inspect the employee's identity and employability documents, and complete Section 2. Enter the employee's original date of hire and the date the form is completed.	<input type="checkbox"/>
For employees who do not have a completed Form I-9 but are no longer employed, draft a memo for each employee missing a Form I-9 explaining why there is no completed form for those employees. Store these memos with the organization's Form I-9 files.	<input type="checkbox"/>

Audit Log	
Document all errors and corrections made during the internal audit.	<input type="checkbox"/>
Retain the audit log with the organization's Form I-9 files.	<input type="checkbox"/>

Internal audits can be expensive, time-consuming and tedious for any organization. This is especially true for organizations with a high number of employees or organizations in industries with high turnover rates, such as restaurants. However, internal audits can be worth the time and effort; when done regularly, they

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can improve compliance with federal law, increase operational and administrative efficiency and save your organization time and money by helping to avoid government audits, fines and penalties.

For more information on Form I-9, contact EBMG today.

CHECKLIST | FLSA RECORDKEEPING

Presented by EBMG

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay and youth employment standards for covered employers. It also requires employers to maintain accurate records of all hours worked and wages earned by employees. While FLSA does not require these records to be kept in any particular format, employers need to ensure they include specific information regarding employees, hours worked and wages earned. This checklist can assist your organization in developing and maintaining an effective FLSA recordkeeping process.

The information contained in this checklist comes from the U.S. Department of Labor’s most current guidance for employers. This checklist is intended to be used as a guide and does not include requirements for all types of employees, such as those paid by piece rate or homeworkers. The steps in this list should be modified to meet the unique needs of your workforce. In addition to FLSA recordkeeping requirements, some states and localities may have their own requirements. Accordingly, employers are encouraged to seek legal counsel to address specific issues and concerns.

Records for Nonexempt Employees	Completed
<i>Review nonexempt employee records for the following information:</i>	
Full name	<input type="checkbox"/>
Social Security number	<input type="checkbox"/>
Address, including zip code	<input type="checkbox"/>
Date of birth if the employee is younger than 19 years old	<input type="checkbox"/>
Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.)	<input type="checkbox"/>
Occupation	<input type="checkbox"/>
Time of day and day of the week the employee’s workweek begins	<input type="checkbox"/>
Total hours the employee worked each workday and the total hours worked each workweek	<input type="checkbox"/>
Basis on which the employee’s wages were paid (e.g., per hour, per week or piecework)	<input type="checkbox"/>
Employee’s regular hourly pay rate	<input type="checkbox"/>
Employee’s total daily or weekly straight-time earnings	<input type="checkbox"/>
Employee’s total overtime earnings for the workweek	<input type="checkbox"/>
All additions to or deductions from the employee’s wages each pay period, including dates, amounts and nature of any additions and deductions	<input type="checkbox"/>

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Total wages paid to the employee each pay period	<input type="checkbox"/>
Date of payment and workweek or work period covered by the payment	<input type="checkbox"/>

Records for Exempt Employees	Completed
<i>Review exempt employee records for the following information:</i>	
Full name	<input type="checkbox"/>
Social Security number	<input type="checkbox"/>
Address, including zip code	<input type="checkbox"/>
Date of birth if the employee is younger than 19 years old	<input type="checkbox"/>
Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.)	<input type="checkbox"/>
Occupation	<input type="checkbox"/>
Time of day and day of the week the employee’s workweek begins	<input type="checkbox"/>
Total wages paid to the employee each pay period	<input type="checkbox"/>
Date of payment and workweek or work period covered by the payment	<input type="checkbox"/>
Basis on which the employee’s wages were paid, including enough detail to calculate the employee’s total wages for each pay period	<input type="checkbox"/>

Records for Commissioned Salespersons	Completed
<i>Review records of salespersons paid by commissions for the following information:</i>	
Full name	<input type="checkbox"/>
Social Security number	<input type="checkbox"/>
Address, including zip code	<input type="checkbox"/>
Date of birth if the employee is younger than 19 years old	<input type="checkbox"/>

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Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.)	<input type="checkbox"/>
Occupation	<input type="checkbox"/>
Time of day and day of the week the employee’s workweek begins	<input type="checkbox"/>
Total compensation paid to the employee each pay period, showing the amount of earnings paid by commission and the amount of noncommission earnings	<input type="checkbox"/>
Date of payment and workweek or work period covered by the payment	<input type="checkbox"/>
Total hours the employee worked each workday and the total hours worked each workweek	<input type="checkbox"/>
A symbol, letter or notation in payroll records identifying that the employee is paid as a commissioned salesperson	<input type="checkbox"/>
A copy of any agreement or understanding reflecting the agreement to pay the employee as a commissioned salesperson	<input type="checkbox"/>

Records for Tipped Employees	Completed
<i>Review records of employees paid by tips for the following information:</i>	
Full name	<input type="checkbox"/>
Social Security number	<input type="checkbox"/>
Address, including zip code	<input type="checkbox"/>
Date of birth if the employee is younger than 19 years old	<input type="checkbox"/>
Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.)	<input type="checkbox"/>
Occupation	<input type="checkbox"/>
Time of day and day of the week the employee’s workweek begins	<input type="checkbox"/>
Total wages paid each pay period	<input type="checkbox"/>
Date of payment and workweek or work period covered by the payment	<input type="checkbox"/>
Total hours the employee worked each workday and the total hours worked each workweek	<input type="checkbox"/>
Total hours the employee worked each workday for which the employee did not receive tips, including the total daily or weekly straight-time payments for those hours	<input type="checkbox"/>

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Total hours the employee worked each workday for which the employee received tips, including the total daily or weekly straight-time payments for those hours	<input type="checkbox"/>
A symbol, letter or notation in payroll records identifying that the employee’s wages include tips	<input type="checkbox"/>
Weekly or monthly amount of tips the employee received that the employee reports to the employer	<input type="checkbox"/>
Amount to which the employer has determined that the employee’s wages increased due to tips, updated each week	<input type="checkbox"/>

Employers often face challenges related to FLSA recordkeeping requirements. To comply with these requirements, employers need to understand which information needs to be retained for each worker. Additionally, the FLSA requires employers to retain payroll records, collective bargaining agreements, and sales and purchase records for at least three years. Records on which employee wage computations are based—such as timecards, piecework tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages—must be kept for two years. That’s why it’s important for employers like you to understand FLSA requirements and ensure their staff is properly trained. Establishing a recordkeeping process can improve operational and administrative efficiency to save your organization time and money. Employers should also consider seeking professional guidance before making potentially costly errors.

Reach out to EBMG today for more information regarding FLSA compliance.

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CHECKLIST | HIRING OUT-OF-STATE EMPLOYEES

Presented by EBMG

While hiring out-of-state employees gives your organization access to a wider pool of talent, it also requires complying with state and local requirements that may be unfamiliar. In general, the state and local laws that govern an employment relationship are based on where the employee is physically working and earning wages, not where the employer is based. In addition to wage and hour laws, other items that employers may need to consider include workers' compensation insurance, unemployment insurance and tax obligations.

This checklist outlines key items for employers to consider when hiring out-of-state employees.

Basic Information	
State	
Locality	

Business Registration and Tax Requirements	Complete	Not Applicable
Register your company to do business in the state.	<input type="checkbox"/>	<input type="checkbox"/>
Consult with tax advisors regarding the nexus for corporate income tax and sales/use taxes.	<input type="checkbox"/>	<input type="checkbox"/>
Designate a registered agent.	<input type="checkbox"/>	<input type="checkbox"/>
Obtain licenses or permits to operate in the state (depending on the type of business).	<input type="checkbox"/>	<input type="checkbox"/>
Register for state payroll taxes (obtain a state tax ID and register for unemployment insurance).	<input type="checkbox"/>	<input type="checkbox"/>
Comply with any local tax requirements.	<input type="checkbox"/>	<input type="checkbox"/>

Hiring Process <i>Review your hiring process for compliance with applicable state and local laws, including requirements regarding:</i>	Complete	Not Applicable
Discrimination protections	<input type="checkbox"/>	<input type="checkbox"/>
Background checks	<input type="checkbox"/>	<input type="checkbox"/>
Credit checks	<input type="checkbox"/>	<input type="checkbox"/>

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Hiring Process (continued)	Complete	Not Applicable
Interview recording protections (e.g., phone or video)	<input type="checkbox"/>	<input type="checkbox"/>
Criminal history	<input type="checkbox"/>	<input type="checkbox"/>
Child labor laws	<input type="checkbox"/>	<input type="checkbox"/>
Pay history	<input type="checkbox"/>	<input type="checkbox"/>
New hire reporting	<input type="checkbox"/>	<input type="checkbox"/>
Use of E-Verify for Form I-9	<input type="checkbox"/>	<input type="checkbox"/>

Employment Requirements	Complete	Not Applicable
<i>Review state and local employment laws, including laws regarding:</i>		
Workplace notices and posters	<input type="checkbox"/>	<input type="checkbox"/>
Leave laws, including sick leave, parental leave and voting leave	<input type="checkbox"/>	<input type="checkbox"/>
Expense reimbursement	<input type="checkbox"/>	<input type="checkbox"/>
Pay transparency	<input type="checkbox"/>	<input type="checkbox"/>
Drug testing	<input type="checkbox"/>	<input type="checkbox"/>
Workers' compensation	<input type="checkbox"/>	<input type="checkbox"/>
Wage deduction and garnishment	<input type="checkbox"/>	<input type="checkbox"/>
Minimum wage and overtime requirements	<input type="checkbox"/>	<input type="checkbox"/>
Meal periods and rest breaks	<input type="checkbox"/>	<input type="checkbox"/>
Pay frequency	<input type="checkbox"/>	<input type="checkbox"/>
Final paycheck	<input type="checkbox"/>	<input type="checkbox"/>

Use this checklist as a guide when hiring employees who reside in different states. For assistance with remote work planning, contact EBMG.

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CHECKLIST | ADA REASONABLE ACCOMMODATION

Presented by EBMG

The Americans with Disabilities Act (ADA) is a federal law that requires covered employers to provide reasonable accommodations to employees and applicants with disabilities, except when the accommodation would cause an undue hardship on the operation of the employer’s business.

A reasonable accommodation is a modification or adjustment to a job, the work environment or the operations of the hiring process. These modifications enable an individual with a disability to have an equal opportunity not only to get a job but also to successfully perform their job tasks to the same extent as people without disabilities.

This checklist outlines key steps to help employers like you comply with the ADA’s reasonable accommodation requirements. Many states have their own laws that provide additional employment protections to employees, so employers must comply with the ADA and any applicable state laws. Accordingly, employers are encouraged to seek legal counsel to address specific issues and concerns.

Employers Subject to the ADA

Covered Employers	Yes	No
<p>Is your organization subject to the ADA? Select “Yes” if your organization is any of the following:</p> <ul style="list-style-type: none"> • A private-sector employer with 15 or more employees for at least 20 weeks in the current or preceding calendar year; • A state or local government agency with 15 or more employees for at least 20 weeks in the current or preceding calendar year; • An employment agency (such as a temporary staffing agency or recruitment company) of any size; or • A labor organization that operates a hiring hall or has at least 15 members. <p><i>If you answer “No,” you can stop here. However, be sure to check any state employment laws that may apply to your organization.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process

Interactive Accommodation Process	Complete
<p>Receive a request for an accommodation (or become aware of an individual’s need for an accommodation).</p> <p>A request for reasonable accommodation starts an informal, interactive process between an employee (or applicant) and your organization. The employee or applicant should let you know they need an adjustment or change at work for a reason related to a medical condition. This request can be informal, and the individual does not</p>	<input type="checkbox"/>

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Interactive Accommodation Process	Complete
<p>need to mention the ADA or use the term “reasonable accommodation” to start the interactive process under the ADA. In some situations, you may become aware of an individual’s need for a modification by observing them or through a third party (such as a family member, health professional or friend).</p> <p><i>If the individual declines the need for assistance or accommodation, you can stop here. However, be sure to document the individual’s denial of assistance or accommodation. Check any state employment laws that may apply to your organization.</i></p>	
<p>Create and maintain separate confidential records of the individual’s request and the entire accommodation process.</p> <p>Start recordkeeping as soon as you receive an accommodation request. Keep documenting as long as the employee remains at your organization. You should document every step of the process, including the request for accommodation, the individual’s medical condition, your interactions with the employee or applicant to discuss options, and why you selected a specific accommodation. To comply with the ADA, these records must be kept confidential and stored separately from the employee’s personnel file.</p>	<input type="checkbox"/>
<p>Gather information about the individual’s disability and functional limitations.</p> <p>When the individual’s disability (or the need for an accommodation) is not obvious or already known, ask the individual for reasonable documentation about their disability and functional limitations. Make it clear why you are asking for this information to verify the existence of an ADA disability and to help identify an effective accommodation. You may require that the documentation about the disability and the functional limitations comes from an appropriate health care provider, such as a doctor, physical therapist, vocational rehabilitation specialist or licensed mental health professional.</p>	<input type="checkbox"/>
<p>Review the individual’s job description.</p> <p>When an employee or applicant requests an accommodation or the need for an accommodation becomes apparent, review the individual’s job description and determine the essential functions of that individual’s job. Additionally, identify any nonessential job responsibilities or tasks that can be reassigned to other employees to accommodate the individual.</p>	<input type="checkbox"/>
<p>Engage with the individual to identify options for an effective and reasonable accommodation.</p> <p>When an employee or applicant requests an accommodation, the appropriate accommodation may be obvious, or the individual may suggest a reasonable accommodation based upon their life or work experience. However, when the appropriate accommodation is not readily apparent, you must make a reasonable effort to identify one. The best way to do this is to consult with the</p>	<input type="checkbox"/>

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Interactive Accommodation Process	Complete
<p>employee or applicant about potential accommodations that would enable them to participate in the application process or perform the essential functions of the job.</p>	
<p>Evaluate whether the requested accommodation would create an undue hardship for your organization.</p> <p>An employer does not have to provide an accommodation that would cause an “undue hardship” to their organization. Undue hardship means that the accommodation would be unduly costly, extensive, substantial or disruptive or would fundamentally alter the nature or operation of the organization. Some factors to consider in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer’s size, financial resources, and the nature and structure of the operation. If a particular accommodation would be an undue hardship, you must try to identify another accommodation that will not pose such a hardship.</p>	<input type="checkbox"/>
<p>Select an effective and reasonable accommodation for the individual.</p> <p>The employer may choose among reasonable accommodations as long as the chosen accommodation is effective, meaning it would remove a workplace barrier that is impeding the employee or applicant. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, you may choose the less expensive or burdensome accommodation as long as it is effective.</p>	<input type="checkbox"/>
<p>Identify the existence of a direct threat.</p> <p>Determine whether the individual is a direct threat to themselves or others in the performance of their job. An individual may be denied an accommodation or be terminated under the narrow exception of posing a direct threat to themselves or others. Under the ADA, a direct threat is a significant risk of substantial harm. Assessing the existence of a direct threat should be based on valid medical analysis and other objective evidence. If you determine a direct threat exists, document the threat by identifying the risk caused by the limitations, the potential harm that could result, and any medical or observable facts on which the risk is based.</p>	<input type="checkbox"/>
<p>Implement the selected accommodation and monitor its effectiveness.</p> <p>The duty to provide reasonable accommodation is ongoing. Some individuals require only one reasonable accommodation, while others may need more than one. Others may need one reasonable accommodation for a time and then, at a later date, require another type of reasonable accommodation. If a reasonable accommodation turns out to be ineffective and the employee with a disability remains unable to perform an essential function, you must consider whether</p>	<input type="checkbox"/>

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Interactive Accommodation Process	Complete
there would be an alternative reasonable accommodation that would not pose an undue hardship.	

Use this checklist to review your organization’s compliance with the ADA’s requirement to provide reasonable accommodations to employees and applicants with disabilities. For assistance, contact EBMG.

CHECKLIST | E-VERIFY: COMPLETING A CASE

Presented by EBMG

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or authorized foreign nationals. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification document (Form I-9).

The federal government implemented E-Verify to enhance the enforcement of immigration law. While E-Verify is a voluntary program for most employers, utilizing it can help employers improve their Form I-9 compliance, limit potential violations and help simplify the process of verifying employees’ identities and employment eligibility.

Overview

E-Verify begins with a completed Form I-9. First, an employer enters an employee’s Form I-9 information into E-Verify. Then, E-Verify confirms the employee’s employment eligibility by comparing the employee’s Form I-9 information against records from the U.S. Social Security Administration (SSA) and the U.S. Department of Homeland Security (DHS). The process of verifying an individual’s employment eligibility is referred to as a “case” and typically takes only a few seconds. From there, E-Verify confirms the employee’s employment eligibility or indicates that the employee needs to take further action to establish eligibility.

While E-Verify may seem straightforward, the system is challenging and can be complicated to learn. Keeping up to date on changes and employee training can be costly and time-consuming. This checklist aims to help employers navigate the E-Verify process and ensure key steps are not missed. Employers may also reference the [E-Verify User Manual](#). The information covered in this checklist comes from the DHS’ most current guidance for employers. Employers can find out more on the DHS [website](#).

This checklist is designed to be used by employers who have already enrolled in E-Verify and is intended to be used as a guide. The steps in this list should be modified to meet the unique needs of an organization. Due to E-Verify’s special rules and requirements relating to document acceptance, retention and processing, employers are encouraged to seek legal counsel to address specific issues and concerns.

Initiating the E-Verify Process

Creating an E-Verify Case	Yes	No	Other
Before creating an E-Verify case for an employee, has each employee completed Form I-9 ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has each newly hired employee with a Social Security number provided it on their Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Has the organization’s registered user created an E-Verify case for each newly hired employee no later than three business days after the newly hired employee starts work for pay?			
Has the organization’s registered user entered the required information from Sections 1 and 2 of the employee’s Form I-9 into E-Verify?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user entered the employee’s citizenship status from Section 1 of the employee’s Form I-9 into E-Verify?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the employee entered an email address in Section 1 of Form I-9, has the organization’s registered user entered the employee’s email address into E-Verify? <i>While the email address field is optional in E-Verify, the organization must enter it into E-Verify if the employee entered an email address.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user conducted a final review to make sure the information entered into E-Verify matches the information on the employee’s Form I-9 before sending the E-Verify case for verification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the E-Verify case results in a mismatch , has the organization’s registered user checked the data against the employee’s Form I-9 to ensure there are no data entry errors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If there are data entry errors , has the organization’s registered user closed the employee’s E-Verify case using the case closures statement: “The case is invalid because the data entered is incorrect” ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the employee has been terminated , has the organization determined how long to retain the terminated employee’s Form I-9? <i>An employee’s Form I-9 must be retained for either three years after the date of hire or one year after the date of termination, whichever is later.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

E-Verify Photo Matching

If an employee presents a **Permanent Resident Card** (Form I-551), **Employment Authorization Document** (Form I-776) or a **valid U.S. passport or passport card**, E-Verify prompts the organization’s registered user to compare the photo ID on the employee’s document to a photo displayed in E-Verify. Matching the two photos helps ensure the validity of the employee’s documents. The following steps are to assist employers in completing E-Verify’s photo matching:

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Photo Matching Process	Yes	No	Other
If the employee presented a Permanent Resident Card (Form I-551), Employment Authorization Document (Form I-776), or a U.S. passport or passport card from List A of Acceptable Documents , has the organization’s registered user entered the employee’s document number into E-Verify as it appears on the document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization made and kept a copy of all documents that trigger photo matching (e.g., Permanent Resident Card (Form I-551), Employment Authorization Document (Form I-776), and U.S. passport or passport card) with the employee’s completed Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user compared the photo displayed by E-Verify to the photo on the document presented by the employee and determined that the photos are identical?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user selected “Yes” or “No” to indicate whether the photo on the document matches or does not match the photo displayed by E-Verify?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee chooses to take action to resolve a DHS mismatch because of a photo mismatch, has the organization’s registered user followed the mismatch process, as described in the E-Verify User Manual?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee chooses to take action to resolve a DHS mismatch because of a photo mismatch, has the organization’s registered user attached and submitted a copy of the employee’s photo document either electronically or via express mail to E-Verify?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee chooses not to take action to resolve a DHS mismatch because of a photo mismatch, has the organization’s registered user followed the mismatch process, as described in the E-Verify User Manual?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Tentative Nonconfirmation

A **Tentative Nonconfirmation** occurs when the information an organization’s registered user enters into E-Verify from the employee’s Form I-9 does not immediately match information from either DHS or Social Security Administration (SSA) records. This does not necessarily mean that the employee is not authorized to work in the United States. If desired, employees must be allowed to resolve a Tentative Nonconfirmation. While an employee takes action to resolve a Tentative Nonconfirmation, the employee must be permitted to work without any change in working conditions based on the Tentative Nonconfirmation. The following steps are to assist employers in addressing a Tentative Nonconfirmation:

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Tentative Nonconfirmation Process	Yes	No	Other
Has the organization printed the Further Action Notice and privately reviewed it with the employee?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee speaks a language other than English or Spanish, has the organization provided the employee a copy of the prepopulated English-language version of the Further Action Notice in the requested foreign language?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization provided the employee with a reasonable amount of time to decide if they want to resolve the Tentative Nonconfirmation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the employee indicated on the English-language version of the Further Action Notice their decision to take or not take action to resolve the Tentative Nonconfirmation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have both the organization and employee signed the English-language version of the Further Action Notice after the employee selects whether or not to take action to resolve the Tentative Nonconfirmation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization provided a copy of the signed English-language version of the Further Action Notice to the employee along with a copy in the employee's requested language, if applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization stored the original signed English-language version of the Further Action Notice with the employee's completed Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee decided not to take action to resolve the Tentative Nonconfirmation, has the organization informed the employee of the possibility of being terminated?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee decided not to take action to resolve the Tentative Nonconfirmation, has the organization's registered user selected the appropriate case closure statement and closed the case?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee decided to take action to resolve the Tentative Nonconfirmation, has the organization's registered user selected "Continue" to refer the case?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization's registered user periodically checked E-Verify to ensure all Tentative Nonconfirmations have or have not taken action to be resolved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Referral Process

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SSA Referral

An employee who chooses to resolve an **SSA Mismatch** is referred to the SSA. The organization must promptly print and verify the information on the **SSA Further Action Notice**. Both the organization and the employee must sign the English-language version of the Further Action Notice. The organization must also file the English-language version of the Further Action Notice with the employee’s Form I-9 as well as provide the employee with a copy. Additionally, the organization needs to provide the employee with a copy of the **SSA Referral Date Confirmation**, which provides the date by which the employee must visit SSA. The following steps are to assist employers in completing E-Verify’s SSA referral process:

SSA Referral Process	Yes	No	Other
Has the organization’s registered user printed the SSA Referral Date Confirmation for each employee electing to take action to resolve an SSA mismatch?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee speaks a language other than English or Spanish, has the organization provided the employee a copy of the prepopulated English-language version of the SSA Referral Date Confirmation along with a copy of the document in the requested foreign language?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization reviewed the SSA Referral Date Confirmation with the employee in private?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization explained to the employee that to avoid possible termination, the employee should visit an SSA field office within eight federal government workdays from the date printed on the Referral Date Confirmation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>In cases involving SSA mismatches based on a failure to confirm U.S. citizenship, has the organization explained to the employee that they can call the DHS at 1-888-897-7781 to resolve the mismatch?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization retained the English-language version of the SSA Referral Date Confirmation with the employee’s completed Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has the organization informed the employee that when an employee receives an SSA mismatch, they are allowed to continue working without a change in working conditions that are based on the mismatch while the mismatch is being resolved?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user selected the correct case closure statement to close the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DHS Referral

An employee who decides to take action to resolve a **DHS mismatch** is referred to the DHS. The organization’s registered user must promptly print and verify the information on the **DHS Further Action**

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Notice. Both the organization and the employee must sign the English-language version of the Further Action Notice. The organization must retain the original notice with the employee’s Form I-9. The organization must also provide the employee with a copy of the notice and the **DHS Referral Date Confirmation**, which provides the date by which the employee must contact the DHS. The following steps are to assist employers in completing E-Verify’s DHS referral process:

DHS Referral Process	Yes	No	Other
Has the organization’s registered user printed the DHS Referral Date Confirmation for each employee choosing to take action to resolve a DHS mismatch?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If the employee speaks a language other than English or Spanish, has the organization provided the employee a copy of the prepopulated English-language version of the DHS Referral Date Confirmation along with a copy of the document in the requested foreign language?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization reviewed the DHS Referral Date Confirmation with the employee in private?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has the organization explained to the employee that to avoid possible termination, the employee should contact the DHS at 1-888-897-7781 within eight federal government workdays from the date printed on the Referral Date Confirmation?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the employee decides to take action to resolve the DHS mismatch, has the organization’s registered user selected “Continue” and referred the case to the DHS ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization retained the English-language version of the DHS Referral Date Confirmation with the employee’s completed Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has the organization informed the employee that when the employee receives a DHS mismatch, they are allowed to continue working without a change in working conditions that are based on the mismatch while the mismatch is being resolved?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user selected the correct case closure statement to close the case once the DHS returned a final employment determination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user referred the employee to the DHS if the employee received a mismatch due to citizenship status ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Completing E-Verify Process

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To complete the E-Verify process, every case must receive a **final case result** and be **closed** with the applicable **case closure statement**. There are four possible final case results: **Employment Authorized**; **DHS or SSA Final Nonconfirmation**; **DHS No Show**; or **Error: Close Case and Resubmit**.

E-Verify **automatically closes** cases resulting in “Employment Authorized.” This means the employer has completed the E-Verify process for that employee.

The following steps assist employers in completing E-Verify’s final case resolution process:

Final Case Resolution

Final Case Resolution Process	Yes	No	Other
Has the organization’s registered user reviewed the case status for employees who have E-Verify cases pending with the DHS or the SSA?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user closed “DHS No Show” cases using the correct case closure statement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user closed all cases using the correct case closure statement once an SSA or DHS Final Nonconfirmation was received?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization notified the DHS when an employee who received a Final Nonconfirmation was not terminated by entering the correct case closure statement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Final Case Closure Statement

There are 12 different case closure statements. Employers must close every case created in E-Verify using the appropriate case closure statement. The following steps assist employers in completing E-Verify’s final case closure statement process:

Final Case Closure Statement Process	Yes	No	Other
Has the organization’s registered user closed every case created in E-Verify?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization notified the DHS if an employee is still working by selecting “Yes” or “No” under the termination option?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization’s registered user selected the appropriate case closure statement ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Has the organization recorded the case verification number on the employee’s Form I-9 or printed and attached the case details screen to the employee’s completed Form I-9?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the organization retained the employee’s completed Form I-9, including electronic copies, and all attachments in a secure location?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For all cases when E-Verify did not confirm that the employee was eligible to work and issued a “Final Nonconfirmation” or “DHS No Show” result, has the organization’s registered user selected the correct case closure statement before closing the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Strategies for implementing a successful Form I-9 process will likely vary depending on the size of the organization and the location of employees, but an effective process can help reduce potential legal exposures while saving time and money. E-Verify is one strategy employers can consider to improve their Form I-9 process and ensure compliance, as it can assist employers in complying with federal immigration law by quickly and easily confirming newly hired employees’ identities and employment eligibility. E-Verify compliments Form I-9 by enhancing employment verification processes. It can also improve operational and administrative efficiency to save an organization time and money and reduce potential legal liabilities.

For more employment resources, contact EBMG today.

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CHECKLIST | SMALL BUSINESS COMPLIANCE

Presented by EBMG

Compliance is the act of adhering to federal, state and local laws and regulations. It's an essential part of any business's operations, regardless of size or industry. Ensuring compliance can aid employers in mitigating risks and avoiding hefty fines and penalties. It can also help organizations become more competitive by strengthening their reputation, improving customer trust and protecting employees' workplace rights.

Compliance obligations can present major challenges for small businesses; most of these organizations must navigate many of the same complex and regulatory obligations as larger employers, such as complying with the Fair Labor Standards Act, but with fewer resources. This is further complicated by the fact that a small business's legal obligations often depend on its size and location. Failing to comply with legal requirements can hinder a small business's growth and future success.

This checklist outlines steps to help small businesses establish compliance practices. It's intended to be used as a guide, and not all of the following steps may be necessary to create and manage compliance practices. This checklist only scratches the surface of small business compliance requirements; therefore, the steps in this list should be modified to meet any jurisdictional requirements as well as the unique needs of an organization. Because small business compliance requirements vary based on several factors, including size and location, employers are encouraged to seek legal counsel to address specific issues and concerns.

Ensuring Compliance With Applicable Laws and Regulations	Completed
Identify all applicable federal, state and local laws and regulations.	<input type="checkbox"/>
Consider legal obligations based on the organization's size, location and industry.	<input type="checkbox"/>
Consult with legal counsel regarding applicable federal, state and local laws and regulations.	<input type="checkbox"/>
Review current organizational policies and practices to determine whether they are consistent with all applicable federal, state and local legal requirements.	<input type="checkbox"/>
Ensure the organization's policies and practices comply with all applicable federal, state and local laws and regulations.	<input type="checkbox"/>
Train personnel on all applicable legal requirements.	<input type="checkbox"/>
Review the organization's policies and practices regularly and update them as needed to ensure compliance with all applicable federal, state and local laws.	<input type="checkbox"/>

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Establishing Compliance Practices	Completed
<p>Perform a risk assessment of the organization’s current compliance activities in the following areas:</p> <ul style="list-style-type: none"> • Recruitment • Onboarding • Offboarding • Training and development • Employee compensation, timekeeping and payroll practices • Benefits administration • Workforce health and safety • Record creation and retention • Response to employee leave and accommodation requests 	<input type="checkbox"/>
<p>Establish a clear set of compliance policies and procedures to develop the framework for how the organization operates.</p>	<input type="checkbox"/>
<p>Develop written policies or an employee handbook outlining laws, regulations and rules the organization and its employees must follow.</p>	<input type="checkbox"/>
<p>Assign a dedicated individual or a group of people to be responsible for overseeing and ensuring organizational compliance, including completing the following tasks:</p> <ul style="list-style-type: none"> • Identifying potential risks • Creating and implementing compliance practices and processes • Monitoring compliance practices and activities • Resolving compliance-related issues • Advising leadership on how to minimize risks and better comply with laws and regulations <p>While this individual or group may not have expertise or knowledge of all compliance functions, they are accountable for taking necessary steps to achieve compliance. This may include seeking guidance from local legal counsel.</p>	<input type="checkbox"/>
<p>Train managers and employees on applicable laws, regulations and policies, including how to do the following:</p> <ul style="list-style-type: none"> • Recognize applicable laws, regulations and requirements • Identify compliance concerns and issues • Report compliance-related issues 	<input type="checkbox"/>
<p>Audit and monitor the organization’s compliance practices consistently and regularly.</p>	<input type="checkbox"/>

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Implement systems to track, report and mitigate compliance-related issues.	<input type="checkbox"/>
Establish a corrective action plan to respond to compliance-related issues quickly and effectively when they arise.	<input type="checkbox"/>
Follow up after responding to a compliance-related issue and take steps to ensure it does not reoccur.	<input type="checkbox"/>
Update or establish new policies and procedures, if necessary.	<input type="checkbox"/>
Provide employees with additional training to prevent future noncompliance, if necessary.	<input type="checkbox"/>
Create a communication channel for employees to report ethical or legal concerns.	<input type="checkbox"/>

Managing Compliance Practices	Completed
Create a compliance calendar to manage and track important dates and deadlines.	<input type="checkbox"/>
Monitor government agencies' websites regularly to stay informed of any changes.	<input type="checkbox"/>
Establish a practice for staying up to date with changing federal, state and local compliance requirements.	<input type="checkbox"/>
Subscribe to industry newsletters and blogs.	<input type="checkbox"/>
Join professional associations related to the organization's industry.	<input type="checkbox"/>
Attend industry conferences.	<input type="checkbox"/>
Leverage technology to manage and improve compliance efforts. Such technology may include payroll software, human capital management, an HR information system or an HR management system.	<input type="checkbox"/>
Consider outsourcing compliance obligations to experts, including third-party vendors.	<input type="checkbox"/>
Establish regular compliance reviews and audits.	<input type="checkbox"/>
Hire legal counsel to help develop policies and procedures, establish compliance practices, advise on employee discipline and respond to government audits.	<input type="checkbox"/>

Successful compliance practices will differ based on the unique needs of an organization and applicable legal requirements. Regularly evaluating compliance practices and processes can help organizations ensure they follow applicable federal, state and local laws; identify any gaps in their processes; and adjust to avoid costly fines and penalties.

Contact EBMG today for more information about small business compliance.

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CHECKLIST | PROCESSING AN FMLA LEAVE REQUEST

Presented by EBMG

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for certain family and medical reasons. In addition to providing eligible employees with leave for qualifying reasons, covered employers must maintain employees' health benefits during leave and restore employees to their same (or equivalent) jobs after leave. In general, the FMLA covers private-sector employers with 50 or more employees and governmental employers of any size.

This checklist outlines key steps for employers to process an employee's request for FMLA leave. Keep in mind that complying with the FMLA may involve additional steps depending on the facts of a specific situation. Also, many states (and some localities) have their own family and medical leave laws that provide broader leave protections to employees. Employers will need to comply with the FMLA and any applicable state and local leave laws.

FMLA Leave Request

Employee name	
Date of leave request*	
Dates of anticipated leave	

* An employer may learn of a request for FMLA leave when the employee submits a request or when the employer acquires knowledge that an employee needs leave that may be for an FMLA-qualifying reason. When requesting FMLA for the first time, an employee is not required to specifically mention the FMLA. However, the employee must provide enough information for the employer to know that the leave may be covered by the FMLA.

Determining Employee Eligibility

Employee Eligibility	Yes	No
<p>Is the employee eligible for FMLA leave?</p> <p>To be eligible for FMLA leave, an employee must satisfy ALL the following criteria:</p> <ul style="list-style-type: none"> The employee works for an employer covered by the FMLA; The employee has worked for the employer for at least 12 months as of the date leave is to start (it does not need to be consecutive); The employee has at least 1,250 hours of service for the employer during the 12-month period before the leave is to start; and The employee works at a location where the employer has at least 50 employees within 75 miles of that worksite. 	<input type="checkbox"/>	<input type="checkbox"/>

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Employee Eligibility	Yes	No
<p>Is the employee’s leave for a qualifying reason?</p> <p>Is the leave for one of the following FMLA-qualifying reasons?</p> <ul style="list-style-type: none"> • The birth of a child and to bond with the newborn child within one year of birth; • The placement of a child for adoption or foster care and to bond with the newly placed child within one year of placement; • A serious health condition that makes the employee unable to perform the functions of their job; • To care for the employee’s spouse, child or parent who has a serious health condition; • Any qualifying exigency arising out of the fact that the employee’s spouse, child or parent is a military member on covered active duty (or call to covered active duty status); or • To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the service member. 	<input type="checkbox"/>	<input type="checkbox"/>
<p>If the employee has already used FMLA leave this year, does the employee still have FMLA leave available?</p> <p>Eligible employees are entitled to take up to 12 weeks of FMLA leave during a 12-month period (26 weeks to care for a covered service member). To make this determination, confirm which 12-month period (leave year) is used by your organization to calculate FMLA leave. An employer’s options for the leave year are:</p> <ul style="list-style-type: none"> • The calendar year (Jan. 1 through Dec. 31); • Any fixed 12-month period, such as a fiscal year or a leave year beginning on the first day of an employee’s employment; • A 12-month period measured forward from the first date an employee takes FMLA leave; or • A rolling 12-month period measured backward from the date an employee uses FMLA leave. 	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>If you answered “no” to any of the questions above, the employee is not eligible to take leave under the FMLA. Provide the employee with a Notice of Eligibility and Rights & Responsibilities (Form WH-381) and a Designation Notice (Form WH-382) within five business days of the employee’s request for leave, indicating that the employee is not eligible for FMLA leave. Also, consider whether the employee is eligible for leave under any other employer leave policy or federal, state or local law.</i></p>		
<p>Did the employee provide sufficient advance notice of their need to take FMLA leave?</p> <p>Generally, an employee must give at least 30 days advance notice of the need to take FMLA leave when they know about the need for the leave in advance and it is possible and practical to do so. If an employee</p>	<input type="checkbox"/>	<input type="checkbox"/>

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Leave Request Process	Complete	Deadlines
<p>FMLA leave and may be treated as paid or unpaid leave under the employer’s established leave policy.</p>		
<p>Grant or deny the FMLA leave by providing the Designation Notice in a timely manner.</p> <p>This notice must be provided once the employer has enough information to determine if the employee’s requested leave qualifies as FMLA leave, as follows:</p> <ul style="list-style-type: none"> • If a certification is not required for the requested leave, provide the Designation Notice within five business days of the leave request; or • If a certification is required, provide the Designation Notice within five business days of when the employee submits a complete and sufficient certification form. <p>The DOL has a model Designation Notice (Form WH-382) employers may use.</p> <p>The employer is responsible in all circumstances for designating leave as FMLA-qualifying and giving a Designation Notice to the employee. Note that leave taken under a disability leave plan or as a workers’ compensation absence that also qualifies as FMLA leave due to the employee’s own serious health condition may be designated by the employer as FMLA leave and counted against the employee’s FMLA leave entitlement.</p> <p>Failure to provide a timely Designation Notice to an employee may be considered interference with, restraint or denial of the exercise of the employee’s FMLA rights.</p>	<input type="checkbox"/>	<p>Date notice is provided:</p>

Administering FMLA Leaves

FMLA Obligations	Complete
<p>During leave, maintain coverage under the group health plan on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.</p> <p>During the FMLA leave period, an employee must continue to pay whatever share of group health plan premiums the employee paid prior to FMLA leave. The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.</p>	<input type="checkbox"/>
<p>If applicable, the employee must provide a fitness-for-duty certification to show that they can resume work after taking a leave for their own serious health condition.</p> <p>Employers may have a uniform policy requiring all similarly-situated employees who take leave for serious health conditions to provide a fitness-for-duty certification.</p>	<input type="checkbox"/>

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FMLA Obligations	Complete
<p>Restore the employee to the same job (or an equivalent job) at the end of the leave.</p> <p>The employee is not guaranteed the actual job they held prior to the leave. An “equivalent job” means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).</p>	<input type="checkbox"/>
<p>Maintain records regarding FMLA leave for at least three years.</p> <p>Covered employers who employ FMLA-eligible employees must maintain records that include the following:</p> <ul style="list-style-type: none"> • Basic payroll and identifying employee data; • Dates FMLA leave is taken (which must be designated in the records as FMLA leave); • Hours of FMLA leave used if leave is taken in increments of less than a day; • Copies of FMLA notices provided by an employee to the employer and by the employer to its employees concerning the FMLA (including any written request for leave from the employee as well as any required notice provided to the employee concerning FMLA leave); • Any documents, including electronic records, describing employee benefits or employer policies and practices regarding the taking of paid or unpaid leave; • Premium payments for employee benefits; and • Records of any dispute between the employer and an employee regarding the designation of leave as FMLA leave, such as emails or other written statements regarding a disagreement on the designation of the employee’s FMLA leave request. 	<input type="checkbox"/>
<p>Maintain FMLA medical certifications as confidential medical records.</p> <p>These records must be maintained in separate files from the usual personnel files. As medical records, they are subject to confidentiality requirements of the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, as applicable.</p>	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company’s compliance with processing an employee’s FMLA leave request. For assistance, contact EBMG

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Summary

HR professionals are responsible for ensuring organizational compliance with laws and regulations. Finding effective processes for managing and resolving these issues can ease the burden on HR professionals and help ensure organizations remain compliant. These checklists are not intended to be overarching but can aid organizations in developing core HR practices to address critical compliance issues in 2023. By implementing and tailoring these checklists to meet their specific organizational needs, HR professionals can help ensure their organizations remain compliant and improve organizational efficiency.

For more HR-related resources, contact EBMG today.