

7 Costly Employment Law Penalties and How to Avoid Them

When compliance slips, the costs can add up fast.

Senior HR leaders are being asked to do more with less—all while employment law complexity keeps growing. This leads to mistakes, which can carry heavy penalties.

The reality? Most employment law violations aren't intentional—they stem from outdated policies and inconsistent processes. This guide covers some of the most common mistakes, what triggers them, and practical steps you can take to avoid them.

What's covered in this guide

- 1 OVERTIME VIOLATIONS
- 2 MINIMUM WAGE MISTAKES
- 3 EXEMPT VS. NON-EXEMPT CLASSIFICATION ERRORS
- 4 FAMILY MEDICAL LEAVE VIOLATIONS
- 5 PAY TRANSPARENCY ISSUES IN JOB POSTINGS
- 6 FINAL PAY MISTAKES
- 7 NON-COMPETE VIOLATIONS

Some helpful definitions

These terms will help you understand the landscape of risk your business will face by being non-compliant with employment law:

CRIMINAL PENALTIES

Can include monetary penalties and jail time.

Require a more stringent burden of proof:
Beyond a reasonable doubt.

CIVIL PENALTIES

Penalties are monetary or injunctive in nature—no jail time.

Require a lighter burden of proof:
Preponderance of the evidence.

GOVERNMENT ENFORCEMENT

Government resources can be limited, leading to a narrower scope of enforcement.

Enforcement can be more predictable, and potential damages are often capped.

Government investigations can be costly, but typically don't include attorney's fees.

PRIVATE RIGHT OF ACTION

Private citizens (and their attorneys) often have more resources, which can lead to significantly more enforcement actions.

Enforcement can be unpredictable.

Even if damages are capped, enforcement actions can be expensive and difficult to settle because of attorneys' fees.

#1

Overtime violations

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Risk #1

Overtime violations

Key federal requirements

- Employers must pay non-exempt employees 1.5x the regular rate for hours >40 in a workweek (not per day).
- Regular rate of pay includes not only base hourly wages, but also commissions, non-discretionary bonuses, and most types of compensation, with some exceptions.
- Overtime must be calculated on a fixed, 7-day workweek, not averaged over longer periods such as bi-weekly or monthly pay periods. For example, if an employee works 50 hours one week and 30 hours the next week, they are still entitled to 10 hours of overtime, even if they are paid bi-weekly.

Potential penalties and costs

CIVIL PENALTIES?

Yes Back wages, liquidated damages (“double damages”), and civil monetary penalties up to \$2,515 per violation.

CRIMINAL PENALTIES?

Yes Willful violations can trigger fines of up to \$10,000, while repeat offenders of FLSA violations can be subject to up to 6 months prison time.

PRIVATE RIGHT OF ACTION?

Yes

GOVERNMENT ENFORCEMENT?

Yes

Risk #1

Overtime violations

Key state rules to watch

- **Colorado:** Employees earn overtime for all hours worked in excess of 12 in a single day, or 12 in a single shift, regardless of the way a workday is measured.
- **Kentucky:** Employees earn overtime for all hours worked on their seventh consecutive day of work in a single week.
- **Rhode Island:** Work performed on Sundays and holidays must be paid at the rate of time and one-half unless qualified as an exception under General Law 25-3.
- **California:** Employees earn overtime for 1) all hours worked in excess of 8 in a single day, and 2) the first 8 hours worked on their seventh consecutive day of work in a single week.

Employees also earn 2x their normal wage for all hours they work 1) in excess of 12 in a single day, and 2) in excess of 8 on their seventh consecutive day of work in one week.

Action items: Three areas to audit right now

- Review whether your organization is complying with state-specific overtime rules.
- Make sure you have a clear overtime policy that is easily available to your employees.
- Audit whether managers are discouraging OT reporting or “editing” timecards.

#2

Minimum wage mistakes

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Risk #2

Minimum wage mistakes

Key federal requirements

- Federal minimum wage is \$7.25 per hour unless a higher state/local rate applies. Employers may pay \$2.13 per hour cash wage and take a tip credit, but must ensure tips and cash wage meet minimum wage and comply with certain conditions—e.g. employers, managers, and supervisors aren't allowed to be paid from tip pools.
- Federally, breaks aren't required, but short breaks (usually 5-20 minutes) must be paid—while meal periods (usually 30+ minutes) don't need to be paid unless the employee works during the break.
- Employers must reimburse expenses incurred primarily for the employer's benefit (such as tools, required uniforms, mileage, etc.) that would bring the employee's wages below minimum wage.

Potential penalties and costs

CIVIL PENALTIES?

Yes Same as overtime penalties, plus fines of \$1,409 per violation for unlawfully kept tips

CRIMINAL PENALTIES?

Yes Same as overtime penalties: Willful violations can carry penalties of \$10,000 and potential jail time for repeat offenders

PRIVATE RIGHT OF ACTION?

Yes

GOVERNMENT ENFORCEMENT?

Yes

Risk #2

Minimum wage mistakes

Key state rules to watch

- **California:** If a required meal period isn't provided, the employer owes one additional hour of pay at the regular rate per workday.
- **Colorado:** Meal and rest periods are required, including a duty-free 30-minute meal period when shifts exceed 5 consecutive hours.
- **Massachusetts:** If an employee prevails with a minimum wage suit, they are awarded "treble damages." Massachusetts tip law requires restitution for tips unlawfully retained plus 12% interest.
- **New York:** Allows liquidated damages up to 100% of wages due absent good faith, and up to 300% for willful minimum wage violations under a specific section. Separate statutory damages can apply (e.g., \$50/workday up to \$5,000 for notice failures; \$250/workday up to \$5,000 for wage statement failures), plus costs and attorneys' fees.
- **Washington:** Does not allow tip crediting—all tips must be in addition to the state minimum wage. Washington also requires a paid 10-minute rest break for every 4 hours worked, and has a statutory double damages remedy for certain willful withholding/unlawful rebate scenarios.

Action items: Three areas to audit right now

- Identify roles that regularly incur unreimbursed expenses (such as mileage, tools, uniforms, cell phones).
- Make sure you have clear overtime, meal, and rest break policies that are easily available to your employees.
- Review whether short breaks are always paid and meal breaks are truly duty-free.

#3

Exempt vs. non-exempt classification errors

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Risk #3

Exempt vs. non-exempt classification errors

Key federal requirements

- Salary Basis Test:** The employee must receive a fixed, predetermined salary that does not fluctuate based on the quality or quantity of work performed.
 - Salary-Level Test:** The salary must meet a minimum federal threshold. This threshold varies but generally is \$684 per week, or \$35,568 per year.
 - Duties Test:** The employee's primary job responsibilities must align with the specific duties of the exemption (e.g., executive, administrative, or professional).
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Potential penalties and costs

CIVIL PENALTIES?

Yes Back wages, liquidated damages, and court fees

CRIMINAL PENALTIES?

Yes Potential penalties for willful violations

PRIVATE RIGHT OF ACTION?

Yes

GOVERNMENT ENFORCEMENT?

Yes

Action items: Three areas to audit right now

- Interview current employees to confirm that actual duties align with exempt tests.
- Check state salary thresholds for exempt status to ensure that exempt employees still meet salary requirements.
- Review job postings to ensure roles are properly classified before filing.

Tool: SixFifty Exempt Non-Exempt Analyzer

Quickly determine the correct employee classification (and avoid costly penalties) with SixFifty's Exempt/Non-Exempt Analyzer.

In under one minute, you can:



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Automatically analyze
an employee



Generate a detailed
classification report



Keep your business safe
from FLSA issues

sixfifty

#4

Family medical leave violations

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Risk #4

Family medical leave violations

Key federal requirements

- Under the Family Medical Leave Act (FMLA), covered employers must provide eligible employees up to 12 weeks of job-protected leave for qualifying reasons; maintain group health benefits during leave; restore employees to the same or equivalent job after leave; and must not interfere with FMLA rights or retaliate.
- FMLA applies to public sector employers, and private-sector employers with 50 or more employees for at least 20 workweeks in the current or preceding calendar year.

Five common FMLA violations

VIOLATION	WHAT IT LOOKS LIKE	HOW IT HAPPENS
Denial of Leave	An employer refuses, delays, or discourages FMLA-qualifying leave when the employee is legally entitled to it.	<ul style="list-style-type: none"> Miscounting service time or hours worked Denying leave because of incomplete paperwork without a sufficient cure period Denying leave because an employee didn't specifically mention "FMLA" even though they described a qualifying condition
Failure to Reinstatement	The employee is not returned to the same or an equivalent position at the end of FMLA leave.	<ul style="list-style-type: none"> The role has the same title but worse schedule, pay opportunities, location, or reporting structure "Soft demoting" by removing key duties, leadership authority, or advancement tracks while keeping base pay intact A temporary replacement works out "better," and the returning employee is reassigned

Risk #4

Family medical leave violations

VIOLATION	WHAT IT LOOKS LIKE	HOW IT HAPPENS
<p>Termination</p>	<p>An employee is terminated during or shortly after FMLA leave, and the employer cannot clearly prove the decision was unrelated to the leave.</p>	<ul style="list-style-type: none"> • Performance problems are first raised after leave begins • Attendance or productivity policies penalize FMLA-protected absences • FMLA leave becomes a selection factor during an RIF
<p>Failure to Maintain Health Benefits</p>	<p>The employer fails to maintain group health insurance coverage during FMLA leave under the same terms as if the employee were actively working.</p>	<ul style="list-style-type: none"> • The employer cancels coverage too quickly when the employee misses a premium payment without providing the required notice • Employer incorrectly triggers COBRA while the employee is still on FMLA leave • Payroll, benefits, and HR aren't aligned on leave status
<p>Retaliation</p>	<p>The employee is treated worse because they took or requested FMLA leave, even in subtle ways.</p>	<ul style="list-style-type: none"> • Reduced productivity during protected leave is reflected in evaluations • Employee is passed over because they were “not present” or “not reliable” • Emails, comments, or texts expressing annoyance with leave usage

Risk #4

Family medical leave violations

Potential penalties and costs

CIVIL PENALTIES?

Yes Back pay, front pay (future lost wages), liquidated damages, and legal fees

CRIMINAL PENALTIES?

No FMLA violations are primarily enforced through civil penalties

PRIVATE RIGHT OF ACTION?

Yes

GOVERNMENT ENFORCEMENT?

Yes

Action items: Three areas to audit right now

- Confirm hours worked, service thresholds, and rolling-year calculations are correct.
- Train managers and supervisors to recognize FMLA leave requests and respond appropriately.
- Confirm employees return from FMLA leave to same or equivalent roles, pay, and schedules.

#5

Pay transparency issues in job postings

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Risk #5

Pay transparency issues in job postings

Key federal requirements

- There is no comprehensive federal law requiring pay transparency in job postings nationwide.
- It's worth noting, though: Even though the National Labor Relations Act (NLRA) does not mandate that employers disclose pay ranges in public job postings, it still protects the right of employees to discuss their wages with coworkers.

Key state and locality penalties to watch out for

- **California:** Civil fines for pay transparency violations range from \$100 to \$10,000 per violation, with no penalty for a first offense that's remedied promptly.
- **Massachusetts:** Employers (25+ employees) are required to post salary ranges (effective Oct. 29, 2025). Penalties include fines up to \$500 for second offenses and up to \$25,000 per violation for the fourth and subsequent offenses.
- **New York:** Employers must include salary ranges in job postings (for employers with 4 or more employees). Violations carry fines of up to \$1,000 for the first offense, \$2,000 for the second, and \$3,000 for the third and subsequent offenses.
- **New York City:** First violation may incur no fine if cured within 30 days of a complaint. Otherwise, fines can reach as high as \$250,000—especially after willful, repeat violations.
- **Rhode Island:** First offense: up to \$1,000; second: \$2,500; third or more: \$5,000 per violation. Private right of action is available.

Action items: Three areas to audit right now

- Audit handbooks, NDAs, and codes of conduct for pay-secrecy language.
- Train leaders to understand that employees can discuss pay and benefits.
- Check how pay-related complaints are documented and escalated.

#6

Final pay mistakes

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Risk #6

Final pay mistakes

Key federal requirements

- Under federal law, the FLSA does not require employers to provide a final paycheck immediately upon termination or resignation. Instead, the FLSA requires that final wages be paid by the next regularly scheduled payday.

However, many states have stricter, immediate, or shorter deadline requirements for final paychecks.

Key state penalties to watch out for

- **California:** Employees who are terminated must be paid immediately, while employees who resign must be paid within 72 hours unless they provide at least 72 hours' notice, in which case payment is due at separation. Final wages include all earned compensation as well as all accrued and unused vacation time. Employers that fail to timely pay final wages may be required to pay the unpaid amounts plus an additional penalty of up to 30 days' wages at the employee's regular rate.
- **Colorado:** Employers who violate state final paycheck laws must pay both the unpaid amount and the greater of (1) an additional 10 days' wages, or (2) 125% of unpaid wages up to \$7,500 plus 50% of unpaid wages that exceeds \$7,500. If the employee can show that failure to pay was willful, the penalty increases by 50%.
- **Delaware:** Employers who violate state final paycheck laws must pay the unpaid amount and 10% of the unpaid wages for each business day the failure continues. Payment will continue to accrue until either payment is rendered or the amount equals the unpaid wages.
- **Pennsylvania:** Employers who violate state final paycheck laws must pay the unpaid wages and the greater of (1) 25% of the total unpaid wages or (2) \$500. Further, failure to pay wages may be subject to criminal penalties up to \$300 in fines, 90 days' imprisonment, or both for each offense.

Action items: Three areas to audit right now

- Review final paycheck laws for each state where your organization has employees.
- Review how final OT, commissions, bonuses, and reimbursements are calculated.
- Ensure HR, payroll, and managers follow a single termination process.

#7

Non-compete violations

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Risk #7

Non-compete violations

Key federal requirements

- There is no general federal statute that comprehensively regulates non-competes across all private employers, as many states do.

Key state and locality penalties to watch out for

CIVIL PENALTIES	CRIMINAL PENALTIES
<ul style="list-style-type: none">• Colorado: Employers can be liable for \$5,000 per injured employee, in addition to actual damages, injunctive relief, attorneys' fees, and costs.	<ul style="list-style-type: none">• California: Employers who require prohibited non-compete terms can face a misdemeanor, punishable by up to \$1,000 in fines, 6 months in jail, or both.
<ul style="list-style-type: none">• Washington D.C.: Employers face administrative penalties between \$350–\$1,000, \$1,500 minimum per enforcement attempt, and \$250 for notification violations.	<ul style="list-style-type: none">• Nevada: Enforcing a non-compete on hourly workers can result in a gross misdemeanor, with fines up to \$2,000 per violation, possible jail time up to 365 days, and administrative penalties up to \$5,000 per violation.
<ul style="list-style-type: none">• Illinois: The Attorney General can impose civil penalties ranging from \$5,000 to \$10,000 for violations.	<ul style="list-style-type: none">• Colorado: Employers using or enforcing void or overly broad non-compete clauses can face criminal charges of Class 2 misdemeanor, with up to \$750 fines, 120 days in jail, or both.

Action items: Three areas to audit right now

- Identify who has non-competes and whether their roles justify them.
- Review geographic reach, duration, and business interest.
- Confirm how and when non-competes are enforced or waived.

Map Tool: U.S. Non-Compete Agreement Laws by State

Laws around non-compete agreements are changing rapidly in the United States.

Explore the interactive map below to see where non-competes are allowed, where they are banned and any specific thresholds that must be met to be legally valid.



SEE IN ACTION

