



Preparing for HR & Tax Compliance Changes

What may be coming from the new administration.



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It's an Uncertain Time for Employers

How will the administration of President Donald Trump shape the next four years? What workforce-related areas are slated for change? Which new policies will have a large and lasting impact on the compliance requirements of employers?

As the 45th President settles in at the White House and both chambers of the U.S. Congress prepare to work with his administration on his legislative agenda, pronounced changes to HR- and tax-related compliance legislation are expected to emerge early. However, at this juncture, the only thing that is certain is change.

For instance:

- Some parts of the Affordable Care Act (ACA) may stay – but what survives and what doesn't is not yet clear. Any new approach to Health Care Reform is sure to bring its own set of new compliance complexities and challenges.
- Changes to the Fair Labor Standards Act (FLSA) currently are on hold pending litigation. However, although provisions have been delayed by a federal court injunction, employers should still err on the side of prudence and be prepared to comply.
- EEOC reporting, due in March 2018 using the new EEO-1 form, could be revised or entirely withdrawn.
- Comprehensive tax reform could affect employment matters, including employer-sponsored benefits, as well as changes to Social Security and Medicare taxes.

As Washington pivots toward potentially significant policy modifications, what is on the minds of U.S. employers?

With all the talk about anticipated sea changes to existing rules and regulations over the next few years, three things remain firm:

1. Employers must still comply with laws that are on the books,
2. Every organization with employees needs to be prepared to handle what comes next, and
3. Uncertainty may prompt many employers to seek a port in the storm – which might include a trusted partner with compliance expertise, regardless of what legislative changes may occur.

In what is clearly an uncertain time for employers, here are some key things you can expect in several areas of Human Capital Management (HCM) compliance.



Health Care Reform

The new administration has indicated it will work with Congress to repeal the Affordable Care Act and replace it with a solution that includes individual Health Savings Accounts; a patient-centered health care system that promotes choice, quality, and affordability; re-establishes high-risk pools; and enables people to purchase insurance across state lines.

While immediate Health Care Reform is somewhat uncertain and organizations of all types and sizes will continue to need help complying with the ACA, strategic changes to the law could significantly impact benefits administration and payroll processes for many organizations. For example, new systems may need to be put in place to track and report the value of health benefits for each employee. In fact, any new changes may actually exacerbate an existing problem.

According to ADP's 2016 ACA Employer Confidence Study, many employers still don't feel well prepared to comply with the existing Affordable Care Act and more than half of employers in the study think they are at risk of violating at least one aspect of annual health care reporting. Over 60 percent aren't sure if they've received a Marketplace Notice and fewer than half of companies in 2016 reported having a plan in place to respond to Marketplace Notices.

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Source: 2016 ACA Employer Confidence Study, ADP



Expectations:

- Early indications are that some parts of the ACA are likely to stay, but what survives and what does not is still not clear.
- If ACA rules change rather than completely disappear, companies already challenged by ACA compliance requirements may need to navigate an entirely new set of rules.
- Employers will still need to issue 2016 Forms 1095-C to their full-time employees and file them with the Internal Revenue Service in 2017 absent guidance from the IRS.
- Many employers will face issues from the 2015 filing period – ranging from the need to complete their filings to managing Marketplace Notices to facing government action for noncompliance that they may not yet have been notified about.

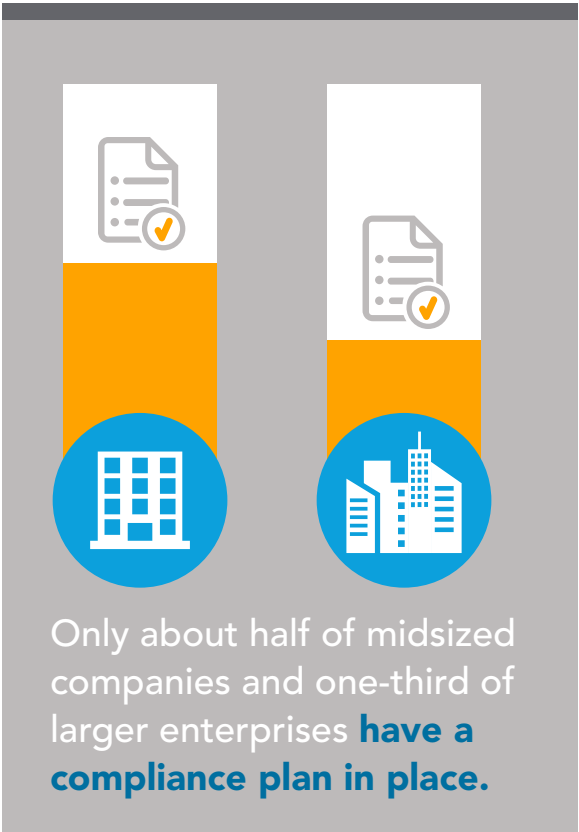
Fair Labor Standards Act

Changes to the FLSA – originally slated for implementation on December 1, 2016 – include a new minimum salary level, a new definition of highly compensated employees, and automatic increases to weekly and annualized salary levels every three years beginning January 1, 2020.

Your company may have already responded to FLSA rule changes by taking a wide array of actions, such as raising the salary of exempt employees to meet the new minimum annual salary threshold; reclassifying exempt employees to nonexempt and paying them overtime; building overtime into a new base rate of pay ... and even rethinking your workforce with changes such as splitting one full-time position into two part-time positions.

In addition to incrementally adding to an employer's compliance burden, FLSA rule changes have also presented employers with a strategic learning opportunity. Organizations that have gone through the valuable process of a thorough workforce analysis – such as examining jobs, validating position descriptions, and executing position reclassifications – now have a better understanding of the law, not to mention how much overtime employees are really working, and when and why overtime is coming into play. Equally important is the fresh understanding of how difficult it is to perform this type of assessment, when you might not have all the required data readily at hand.

The 2016 ACA Employer Confidence Study reports that while 80 percent of all companies are aware of the FLSA rule change, only about half of mid-sized companies and one-third of larger enterprises have a compliance plan in place. A 2016 Manta poll of 1,170 small business owners reveals that, although a majority (58 percent) had done their due diligence to comply with new FLSA rules, 42 percent weren't even aware of FLSA overtime changes.



Source: 2016 ACA Employer Confidence Study, ADP

Expectations:

- Although a federal court injunction put a stay on December 1, 2016 implementation, new leadership at the Department of Labor certainly will revisit this rule change.
- As a result, employers should be ready to comply with FLSA changes as planned, in case the injunction is lifted, and continue to comply with existing FLSA rules.

EEO-1 Reporting

The new EEO-1 form increases the amount of information reported to the EEOC, expanding the number of potential entries on the EEO-1 form from 140 to 3,360.

Revised annual EEO-1 reporting, which will be electronically filed first in March 2018 for the 2017 calendar year, will include employee wages and hours worked, in addition to employee gender, race/ethnicity, and job category. The new EEO-1 form increases the amount of information reported to the EEOC, expanding the number of potential entries on the EEO-1 form from 140 to 3,360.

To meet new EEO requirements, employers will need to merge data from HR, payroll, and timekeeping systems – a major change since previous EEO-1 reporting was based solely on HR data. To get ahead of these requirements and what the data might reveal, employers should consider conducting a privileged audit of pay practices using

the EEO-1 form categories to identify any pay disparity, since systemic patterns of pay discrimination will likely be the focus for government enforcement.

While ADP's 2016 ACA Study reveals a high level of awareness concerning EEO-1 reporting changes (about 70 percent of large and 60 percent of mid-sized companies), only about 20 percent of all companies report having a plan in place to manage the changes.



Expectations:

- Changes to the EEO-1 form could move forward, be delayed, or be entirely withdrawn.
- However, even as priorities may change at the federal level, states and local governing bodies may step in with their own rules and legislative remedies to address growing areas of interest, such as pay equity.
- California, Massachusetts, and Maryland already have strong pay equity laws.
- More laws from different jurisdictions will add to the complexity of compliance efforts for employers with worksites in multiple jurisdictions.

Comprehensive Tax Reform

Tax reform is high on the agenda for the new administration. Beyond creating new tax brackets with lower rates, the new president has expressed interest in having Congress rewrite the tax code to allow new child and elder care deductions; creation of new Dependent Care Savings Accounts that allow tax deductible contributions; and a guarantee of six weeks of paid maternity leave.

Many potential elements could affect employment matters, including employer-sponsored benefits – such as caps on the tax treatment of employer health benefits, limits on the tax treatment of retirement plan savings and employer contributions, expanded health spending accounts, and other benefits from educational assistance and achievement awards to housing and meal allowances.



Expectations:

- If enacted into law, many proposed tax reforms may significantly add to employers’ reporting and tracking requirements.
- The most visible include Health Care Reform-related tax elements (perhaps a cap on tax-free employer-sponsored insurance with Form W-2 reporting implications), potential new deductions for child and elder care expenses, and a guaranteed maternity leave provision that would impact unemployment insurance laws.

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Ensure You Have the Compliance Tools You Need

Even before the full landscape of new compliance changes takes shape, evaluate your current ability to handle compliance administration. How well does your current solution help you meet your existing compliance needs? Does your compliance solution have the range of capabilities and flexibility to take on the burden of new compliance challenges?

Tools and processes can vary – from manual to partially automated and fully integrated automated solutions systems – which, in turn, can impact your level of success. Integration and automation are key. For example, utilizing an automated time and attendance system, as part of a comprehensive workforce management solution, can make a huge difference in how successful you are collecting critical ACA reporting data, meeting FLSA and EEOC requirements, and accurately calculating overtime costs.

A comprehensive solution and expertise can help your organization stay ahead of new HCM-related compliance requirements.

- A comprehensive time and attendance system will enable you to collect and track not only the time worked by employees, but also their leave of absence information, vital for compliance with the federal Family and Medical Leave Act, as well as related state and local programs.
- Pay codes and pay rule engines can help ensure that hours are tracked, people are paid properly, and accurate data is available for ACA reporting purposes.
- Scheduling tools can help managers create schedules that align well with demand, and offer fair and transparent overtime allocation to all eligible employees.

In the end, a comprehensive solution can help your organization stay ahead of new HCM-related compliance requirements in an environment, where broad and deep changes may come around the corner at any time.

Find a Port in the Storm

Change and uncertainty can distract organizations from focusing on their core responsibilities. That’s why some employers may opt to “find a port in a storm” by engaging the expertise of a trusted and knowledgeable partner.

As an example, ADP® provides that type of support to more than 610,000 companies around the world – including 25,000 employers that rely on ADP for assistance in ACA compliance management. Third-party outsourcers provide the added value of integrated systems, professional support, innovative best practices, and insights that are typically not available at most companies.

Take-Home Thoughts...

- The new administration in Washington has a broad agenda for regulatory and legislative changes, but few specifics are yet available.
- Potential changes to the ACA law, FLSA reporting, and EEOC rules are likely to increase the compliance burden for employers.
- According to the 2016 ADP ACA Study, less than half of companies surveyed feel well prepared to manage most aspects of ACA compliance and many employers feel they are still at risk for 2016 ACA violations. The same study revealed a significant lack of preparedness to manage FLSA and EEOC rule changes.
- Engaging integrated solutions is vital to managing the huge amounts of data needed from across multiple functions to satisfy many compliance requirements.
- Employers facing a compliance environment marked by uncertainty and change may choose to engage the expertise of trusted third-party providers instead of tying up internal resources and human capital that may not have the right skills.

*The 2016 ACA Confidence Study is a blind, quantitative, online study. Interviews were conducted among companies with 50+ employees among the heads of HR, senior HR/Benefits managers, and executives who influence decisions regarding their company's employee benefits policy, system, and service.

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