Navigating the Shifting Sands of the Compliance Landscape

Count on ADP TotalSource® to Watch for Changes That May Affect Your Business

Don’t miss the rest of this Thought Leadership series: it will help you understand the role employee benefits play in shaping the future of your business:

• Changes to the health insurance ecosystem,
• Your company’s revenue and talent needs,
• The expectations of today’s healthy workforce, and
• Our strategic partnership.

No function is more crucial to your employees – and interconnected with other parts of your business – than compensation. Problems with your compensation strategy can result in fines or penalties and employee dissatisfaction. Due to these potential potholes, compensation and benefits administration requires the microscopic-level oversight of business owners, and ADP TotalSource® is here to help.

Payroll Issues: Who Gets Overtime Today? Tomorrow?
Consider the proposed changes under the Fair Labor Standards Act (FLSA) that may cause 4.6 million employees to become eligible for overtime pay next year. Some of those employees are likely to be yours. Today, most white-collar employees who are paid more than $455 per week ($23,660 per year) are exempt from overtime pay. Next summer we may see that pay limit increase to $970 per week ($50,440 per year). How many of your employees fall in that range?

Consider how much of your business infrastructure may have to change to meet that new regulation: time and attendance tracking, staff schedules and budgets, even your business hours. Until the regulations are issued, it’s unknown whether you can use nondiscretionary bonuses, commission arrangements or new job descriptions to remain in compliance.

In addition to the hard-dollar cost of labor, the time you spend managing the payroll function is time you can’t spend on your customers to help your business grow. Where and how securely you keep your payroll and other employment data can prove invaluable or costly, so you need to do it right.

Of course, payroll decisions also affect your benefits. Eligibility and coverage amounts for life and long-term disability (LTD) insurance are often tied to an employee’s overtime status and pay levels. But even more important, how will pay and benefit cost increases affect your total rewards budget? If the market demands a 3% greater budget for payroll,1 where does that leave your budget for benefits? Will you have to cut your benefits, hold steady or adopt a new employee contribution strategy to keep total reward expenses under control?
How to respond: Your ADP TotalSource Human Resource Business Partner (HRBP) can explain how changes to the FLSA and other regulations may affect your business and can help you craft a benefits strategy that enables you to affordably achieve your business and talent goals. Trust your HRBP to offer proven strategies and data management solutions to position your business for a potential change and comply with regulations once they take effect.

Not All Regulations Come from Washington, D.C.

While regulatory policies often start in our nation’s capital, they really start much closer to home. Overlooking state and local regulations can be costly, resulting in both financial penalties and a damaged business reputation in the markets you serve. Consider all the ways that regional and local issues can affect your business:

- **Pregnant workers.** Do you have employees in one of the states or cities requiring you to offer job transfers or other “reasonable accommodation” for expectant mothers? Are you required to offer a space for new moms to pump and store breast milk?

- **Minimum wage requirements.** Rates vary at the federal, state, county and local levels. Are you compliant? Is your required poster up to date with the minimum wage that applies to each of your locations?

- **State and local paid sick time plans and regulations.** At least four states made changes in 2015. Is one of them yours? Are you in compliance?

- **Local restrictions on student working hours.** Can you identify students in your payroll system and automatically track their working hours when creating schedules?

- **Hiring documents and processes.** This is one of the fastest-changing areas affecting employers. Can you look at a potential employee’s social media profile? Does your drug screening program have a process for dealing with marijuana (medical or otherwise) where it is legal under state law? Are you asking applicants about criminal convictions and credit histories? These once-common practices are now prohibited in many jurisdictions.

- **Domestic partners.** Do state or local regulations affect your benefit, family leave and other policies for domestic partners? With same-sex marriage now available nationwide, do you still have to offer benefits coverage to unmarried same-sex domestic partners?

How to respond: To stay up to date, keep an eye on your biweekly Insights & Solutions newsletter and the ADP TotalSource Compliance Corner updates. When issues like the above arise where you do business, your ADP TotalSource HRBP can connect you with resources to keep you compliant (such as ADP TotalSource’s Recruiting Solutions) and offer posters and other employee communications to meet your disclosure obligations.

### A compliance materials checklist – ADP TotalSource helps you keep your materials up to date:

- Employee handbook and policy statements
- Posters – wage and hour; workers’ compensation
- Training records for safety, sexual harassment and other policies
- Time and attendance systems
- Employee application forms and record retention
- Employee personnel files
- OSHA and other safety records

Can You Change Your Health Plan and Stay in Compliance?

Updating a health plan is a crucial annual activity. As your business needs change, you may want to consider changing one or more of the many provisions of your health plan. Deductibles, eligibility, contribution strategies and carriers all may need to change from time to time.

Many savvy employers are adjusting their plans to reduce health care costs. But even the most well-intentioned changes may produce costly unintended consequences. For example, moving employees from full-time to part-time to reduce plan eligibility may soon be prohibited. A large entertainment company learned that the hard way in mid-2015. Its employees filed a class-action suit, charging that reducing employees’ hours below the threshold for benefits eligibility violates ERISA.
This case is yet to be decided, but it could severely limit the options available to all employers during their annual benefit reviews. As that case and others are settled, the courts’ decisions will create case law … another set of limitations you need to understand in order to remain compliant and penalty-free.

**How to respond:** If you are considering changes to your health plan to fit your budget, you may be asking yourself some of these questions. Talk to your HRBP about the possibilities, because each action may create unintended downstream effects.

- **Can I add employees to my plan? Possibly.** You will want to consider how that inflates your total rewards budget and whether increasing a fixed cost like benefits might harm your ability to pay expected bonuses or pay increases to longer-service employees. Will adding employees make your plans overly competitive? If so, keep in mind that most employers find that a decision to expand benefits eligibility is much more difficult to reverse than a change in cash compensation practices.

- **Can I reduce the number of employees who are benefits-eligible?** As that large entertainment company learned, converting full-time employees to part-time employees is dangerous! If you do reduce the number of full-time staff through attrition, plan for how you will retain the employees who remain and/or recruit part-time replacements.

- **Can I adopt a new employee contribution strategy?** Federal regulations require your employee coverage contributions to meet affordability requirements, but dependent coverage costs are not subject to those regulations. Spouses are generally the most expensive dependents to cover, so you have three options to control costs: (1) subsidize less of their premiums, (2) eliminate coverage for spouses who have coverage from the spouse’s employer or (3) give spouses an incentive to take their own employer’s coverage. But failing to offer a competitive subsidy for dependent coverage may cause employees with families to look elsewhere for coverage – or employment. Can you afford to lose valuable employees? Ask your ADP TotalSource HRBP how other employers are meeting these challenges.

In fact, as you consider any benefits strategy changes for the 2016–2017 Plan Year, turn to your HRBP and the ADP TotalSource ACA Center of Excellence. Our subject matter experts have extensive knowledge of both current regulations and recent case law governing the operation of your plan.

To prepare for your Open Enrollment planning meeting, be sure to complete the Organizational Health Readiness Survey from ADP TotalSource. If you haven’t already, click through the invitation you received via email on December 9 and complete the survey now. Your survey responses will help your HRBP bring you creative solutions that both keep you in compliance and adapt to your changing business strategy. You also may want to re-watch the business and benefits strategy videos from 2014. They will help you think bigger, because your benefits are not just about benefits; they are about the health and success of your business.

Read [Our Strategic Partnership](#)

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1. Towers Watson, 2015, as reported by http://money.cnn.com/2015/08/10/pf/pay-raise/

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Don’t forget the new IRS forms you must provide in 2016:

- **Forms 1095-B and 1095-C** are due to employees by January 31, 2016.
- **Forms 1094-B and 1094-C** are due to the IRS by February 29, 2016 if filed on paper, and by March 31, 2016 if filed electronically.

Learn more by visiting the dedicated client ACA website.