



The Seven Best Practices for Labor Compliance Success

The federal investigation into El Mezcal Mexican Restaurant in Ottawa, Kansas started several years before any charges were brought against restaurant manager, Alex Sanchez. But his eventual imprisonment came well after the charges proved to be enterprise-ending for his business. As soon as indictments were handed down, restaurant management was caught off guard, and operations were paralyzed. Federal action against Alex started in 2011, the restaurant was forfeited in 2013, and in February 2016 he was sentenced to six months in federal prison on four counts of harboring undocumented workers for financial gain and five counts of encouraging people to live in the U.S. illegally for financial gain.



Of course, hiring illegal aliens isn't the only I-9 problem you might face. Extra vigilance is trying to follow the law can do just as much damage to your enterprise. Unfair treatment in the process of completing the I-9 forms can also lead to a major penalty if non-citizens are asked the questions differently than U.S. citizens. A Miami pizzeria chain, Pizzerias, Inc. , was fined \$144K fine for asking non-citizens questions they did not ask U.S. citizens. They were not trying to circumvent the law. They were trying to follow it and got a six figure fine as thanks for their efforts.

You might assume this could never happen to you because you follow the rules. But even though you might be trying to comply with ICE rules a severe penalty may still result from an ICE audit. Just ask South Carolina's Centerplate, a food service company. They were charged with discrimination against legal alien workers and paid a \$250,000 fine. Their crime? They required specific documents to prove employment authorization.

It is not just I-9 employment eligibility mistakes that can be costly. Violations of department of labor rules at the city and state level are also becoming costly.

Sick Leave case in point: a restaurant group with locations in the Washington, D.C., area agreed to pay up to \$1.49 million to settle claims it didn't provide sick leave required by a 2014 city law that added restaurants to the type of business covered by the city's sick leave ordinance. In addition, the group of tipped workers charged they weren't properly paid while performing un-tipped work such as re-setting tables at the end of the day.



Outside the restaurant industry a tree-trimming company in Pennsylvania received the largest I-9 compliance “fine/forfeiture event” on record in September of 2017.

Asplundh Tree Experts, Inc. was fined at \$95 million dollars and note that’s million with an “M” and it’s not a typo. The severity of the fine stemmed from special circumstances that amounted to a willful, planned and systemized violation of immigration laws. In addition to the record fine, there was a dramatic new twist. Three of Asplundh’s managers who were responsible for personnel decisions pled guilty to felony charges.

ASPLUNDH
ANYTIME. ANYWHERE.

These all are, essentially, compliance issues that should have been avoided. And the saddest part of the story? These large fines and penalties were easily preventable.

These cases and others like it represent something of a “Sea Change” for labor compliance enforcement. Make no mistake; there is a Sea Change in the enforcement climate, a measurable change in policy enforcement, frequency, and methodology. This Sea Change means that you are at high risk of financial and operational exposure in a way that wasn’t really the case before now. And the Asplundh story is not an isolated incident.



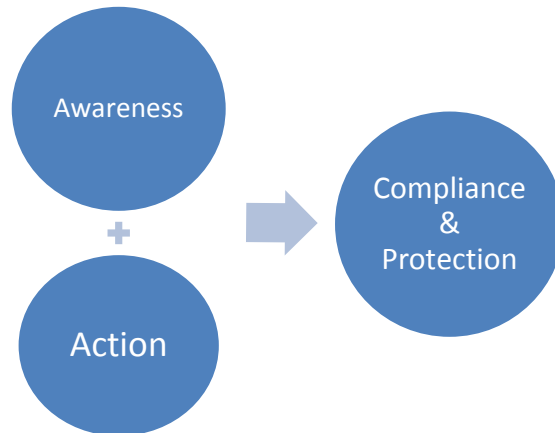
Signs of the Sea Change: in October of last year, the Acting Director of Immigration and Customs Enforcement, Tom Homan, said that he has asked Homeland Security Investigations (HSI) to increase the amount of time it spends on worksite enforcement investigations by 4 or 5 times. Also new is the point of emphasis on filing criminal charges against business managers involved in personnel and HR related duties for compliance failures and sexual harassment complaints.

This means increased liability risk for your company and your management team. U.S. Immigration and Customs Enforcement is projected to hire 10,000 new agents this year under an executive order signed in January by President Donald Trump, in part to strengthen enforcement of I-9 record-keeping rules.



1. Adapt to the Sea Change.

The first best practice is to increase your understanding of hiring and labor compliance requirements. This new awareness is essential to setting up effective hiring processes that manage labor risk appropriately.¹



It's long past time for employers and personnel managers to take a hard look at their hiring and compliance processes to determine if they meet the labor compliance standards required of a “best practice.” It is a mistake to think that your business isn’t at risk for an ICE audit. Enforcement numbers say it’s only a matter of time before you are the subject of a “work-site enforcement action.” Isn’t that a great term? That administrative term really encapsulates how unpleasant a visit from ICE might be. And, keep in mind they conduct these audits routinely.



U.S. Immigration and Customs Enforcement

Employers that rely on “blind luck” as a defense against compliance problems, hoping to avoid an audit, are exposing themselves to needless risk and a huge potential fine. In addition, if you perform any tasks related to the hiring process, or

work directly in the personnel area, I’m willing to bet you aren’t being paid nearly enough to risk a criminal charge as a result of a negative review in an ICE audit.

¹ <http://performance-rules.com/uncategorized/2009%E2%80%99s-personal-journey-awareness-vs-acceptance/>



2. **Take The Big View:** Decide what your hiring and compliance system needs to accomplish by starting with a “30,000 foot view.” **The first step is clearly identifying the results that you need from your hiring and compliance management.** These will typically include finding the right employees, preparing new hires for work, ensuring labor compliance, properly training new hires, making them part of a team and culture, retaining your workforce long-term, and then properly terminating them at the end of their time with your company.

Next, identify the end users of the hiring process. The Employee, their Supervisor, the Payroll Manager, the Payroll Processing Company, Auditors, and even Attorneys will all be looking at your hiring paperwork. Each has their own point of view. Your system should facilitate the review of your completed employee paperwork by all stakeholders. This means anticipating what they will look for, how to facilitate their process, and ensuring that they find what they need – and what you want them to see.

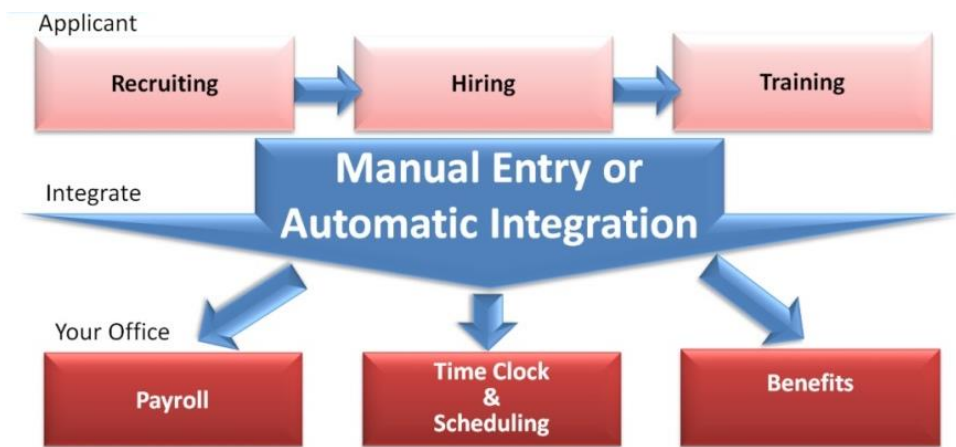
While you are taking in the 30,000 foot view of your hiring and compliance process, ask yourself this question, “what is causing my team the most problems?” Take time to reflect on the bottlenecks in your hiring and compliance process. Where are you finding the most mistakes? Who is making them? Who complains, and what are they complaining about – the people or the process? You should be able to make a short list almost immediately.²

² Photo Credit <https://www.information-age.com/how-take-long-term-view-big-data-healthcare-123461369/>



To be as successful as possible in developing your process you may want to create your own flowchart, as shown below. Whether you're using an integrated online system or you're manually entering the information, the flow of information needs to be successfully repeated in each instance as new people are brought into the organization.

Ultimately your hiring management and compliance program and related processes are only as strong as the weakest link. You can have the best HR department, HR consulting firm, or labor attorneys available, but the weak link in the hiring process is the same for all of us. That's right, it's the newly hired employee. The new hire doesn't know what is at stake, doesn't know the rules and regulations, and has most likely not attended your HR training. Yet, when auditors arrive at your



door, it is the new hire's completed paperwork that will be the focus of their inquiry. It may not be fair, but that is what will happen. The solution is to automate that process to ensure compliance.

3. **Accept technology**

As the method of addressing the Sea Change consider technology as a possible solution to your hiring processes whenever possible. After completing best practice #2, you now have a flow chart of your process which details the flow of information coming from the new hire into your company.

After developing a sound understanding of your hiring process and how each step is completed, you should be ready to automate it in an appropriate system.





Compliance is best accomplished by removing human error from your hiring process. No matter how good and valuable your HR team is, everyone will occasionally make mistakes. And, as mentioned above, your new hire knows next to nothing about the rules of hiring, paperwork and policy management. Your new hiring and compliance management system should address preventing all the mistakes the new hire can make in completing their paperwork. The goal is a full and complete set of error-free forms. If correctly implemented automation of the hiring process will never leave you with errors on forms or missing paperwork that cannot be recaptured after the employee leaves the company. Though turnover is happening every day, your system should cover you for any potential liability.

The good news is that there are some extremely effective tools now available for achieving complete compliance with I-9 issues and the full spectrum of policy sign-offs now required for labor compliance. Today there is an efficient and cost-effective way to manage the rules, even across multiple states, in order to automate the creation of full labor compliance in the recruiting and hiring process. Until recently, most systems on the market were legacy systems with price-tags that were prohibitive (and many still are.) But now, there are some extremely effective private cloud-based systems that any business can afford. Automation shouldn't cost you any more than what a payroll service might cost.

4. **Hot List:** YOUR hot list is THE “hot topic” for the hiring and compliance management function’s successful execution.

Determine what you will manually check - with human eyes - no matter what your process is. For example; on completion the I-9 form is subject to audit with only 3 days notice, yet you are responsible for the forms for three years even if the

employee stays no more than 3 days. You need an integrated system to make sure things don't fall through the cracks. Whatever scheme you implement you'll need to confirm that there are tools already in place that enable review of the critical data and forms you'll intend to manually check for accuracy and quality.



Other potentially critical compliance issues that might require direct inspection to ensure quality completion could include documents used for Unemployment Appeals, Insurance Claims, and handling Legal Issues. Your new “hot list” should reflect your current labor compliance situation – high risk steps in the hiring process – to minimize your current exposure. How that you've created your own ‘hot list’ the question is, ‘How much liability do you still have?’



5. **Security:** Assuming you've taken our advice in Best Practice #3, and decided to automate your hiring and compliance, best practice #5 is another best practice to consider adopting. System security should protect all levels of the system server site, including the premises or physical place where the information is held. That system controls access to the information and should be protected from online and offline intrusions. An important best-practice is to become familiarized with any potential system security issues that may arise. What you'll find is that technology standards often rely on management to create operating policies that ensure the security of systems; internal, online, email, etc.

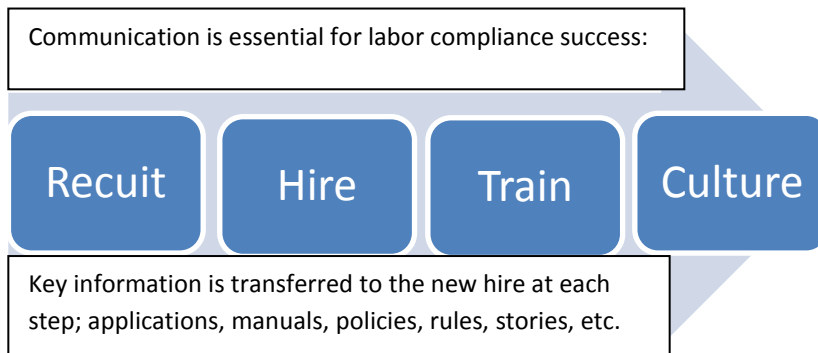


What you are looking for in an automated system are multiple levels of security, including protection of PEI (from the outside), confidentiality (internally), and server security (hardware and software stability). You will need to ask about security measures during any requested integrations, as well. A double encrypted security system, that is, an encrypted data stream going through an encrypted channel, is most desirable. Although technology experts often abhor redundancy, being double-safe is a common practice in business management and should also extend to system security.

Another key concern is confidentiality. You will need to control the private employee information of each department, work site, and location in the company through multi-level user-access that limits which managers can see the information. Access levels need to be clear and well-defined. Your hiring and compliance management system should make it easy to check that those people are logging in properly with access to the correct places in the system.

Working with a Private Cloud system avoids many of your key security concerns and automatically places your system in the top 10% in overall system security. Private Cloud system providers bring significant expertise and investment to security and back-up, as they specialize in providing system reliability. In addition, taking a Private Cloud-based approach can make security, system upgrades and switching to additional modules far easier and safer than the traditional client-server implementation of many of the larger legacy systems.

6. **Messaging:** Successful hiring requires effective communication from the employer to the new hire, including employee manuals, government rights, company policies and procedures, work site rules and more. Communication is the key to establishing and maintaining employee engagement in their hiring process and labor compliance; especially in creating error-free and complete employee documents.



The successful addition of a new hire to the company, workforce, and culture is what's come to be known in HR circles as "onboarding". Career Counselor Arlene Hirsch described it like this: ³ "Onboarding is a prime

opportunity for employers to win the hearts and minds of new employees. Don't waste it, experts say." Quoting Amy Hirsh Robinson, principal of the consulting firm The Interchange Group in Los Angeles, Hirsch writes "Onboarding is a magic moment when new employees decide to stay engaged or become disengaged." She goes on to conclude that, "it offers an imprinting window when you can make an impression that stays with new employees for the duration of their careers."

Your ability to customize messaging, in your onboard system, will ensure your voice is heard by those new hires throughout the "onboarding" process and meet the needs of your new hires. It affords them the opportunity to learn how to become part of your team and ultimately be integrated into the culture of your company. Therefore, it is very important that there is a consistent tone in the messaging over the course of the days, weeks, and months during which you are communicating with new hires.

7. **Consider Total Cost of Ownership** and Return on Investment measurements in establishing a sustainable hiring and compliance management process. Given the potential risks, it might make sense to invest now in an affordable compliance management system for your hiring process. Invest for maximum ROI but even with excellent ROI you still need to consider other things, like the amount of time your system will take to operate. Be wary of extended installation schedules and continual training requirements that have the potential to drain scarce resources from your operations.

³ Don't Underestimate the Importance of Good Onboarding, By Arlene S. Hirsch, August 10, 2017 at <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/dont-underestimate-the-importance-of-effective-onboarding.aspx>



It is important to consider all the costs of owning and operating the system, which is why we refer to the TOTAL cost of ownership. In addition to the “monthly list price” of a system look for other costs that can be added such as; monthly bandwidth, month cloud storage cost, monthly cost per employee, per location costs, per user login credentials costs, charges per change, help ticket charges, programming per hour, new forms, customized forms, and more. Costs can really add up for the system if billing is structured in a way that adds more billable items each month.

Training costs to learn to use some systems are frequently extra, as are travel to an off-site training venue. These can add to the TCO and reduce the ROI significantly. Due to the high investments in training on many systems your own staff turnover can increase costs dramatically. Hiring functions might even cease if your key personnel turn-over and the system is too complicated to operate without those trained specialists. Whatever system you adopt, eliminating the high costs of legacy system setups and monthly fees should be a key consideration these days.

Take Action:

Set up a System Review of FastrackOnboard to see how the Worry-Free hiring and compliance management system might work for your company.

Improving your hiring and compliance management process is easy with the right system and FastrackOnboard provides a complimentary evaluation to get you oriented.



Register for your free orientation here:

Go to <https://www.fastrackonboard.com/evalapp/> and enter your name and contact information into the form to claim your hiring and labor compliance evaluation.