



SIRM **Harassment Policy/Prevention** 

- ✓ Have a written policy with a clear definition of harassment and a statement that it will not be tolerated.
- ✓ Establish a complaint procedure.
- ✓ Provide training and education.
- ✓ Investigate every complaint.
- ✓ Discipline if necessary.
- ✓ Communicate via variety of methods to management and employees.

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SIRM **Genetic Information Nondiscrimination Act (GINA)** 

- Prohibits discrimination against an individual in employment and health insurance on the basis of genetic information about the individual or a family member.
- Covers employers with 15 or more employees; includes state and local governments.

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SIRM **Fair Labor Standards Act (FLSA)** 

Establishes minimum wage, overtime pay, youth employment, and record-keeping standards affecting full- and part-time workers in the private sector and in federal, state, and local governments

Applies to:

- Employers with at least \$500,000 in annual dollar volume of business (with limited exceptions).
- Organizations with employees who engage in interstate commerce or the production of goods for interstate commerce.

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SIRM **IRS Independent Contractor Guidance**



Behavioral control

Financial control

Relationship of the parties

Under FLSA, an employer has no ongoing obligations to self-employed independent contractors.

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SIRM **Independent Contractor vs Employee**

Reuters World Business Markets Sustainability Legal More News

Trump administration moves to nix Biden-era limits on independent contractors


By Daniel Wiessner
February 26, 2026 9:24 AM EST · Updated February 26, 2026




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SIRM **Exempt and Nonexempt Employees**




Type of Employee	Description
Exempt	<ul style="list-style-type: none"> ▪ Excluded from minimum wage and overtime pay requirements of the law. ▪ Must work in a bona fide manner and meet requirements for: <ul style="list-style-type: none"> – Primary (exempt) duties. – Salary compensation (as a uniform amount). – Minimum salary.
Nonexempt	Not excluded from minimum wage requirements and entitled to overtime. This includes blue-collar workers, no matter their compensation level, as well as veterans in blue-collar jobs.

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SIRM "White-Collar" Exemptions 

- "White-collar" exemptions include EAP employees and computer and outside sales positions.
- Employees who meet requirements of exemption tests in addition to minimum salary and salary basis tests are exempt from overtime pay.
 - **Executive**
 - **Administrative**
 - **Professional**
 - Computer EE
 - Outside Sales
 - Blue Collar
 - Police, Fire Fighters, paramedics, Other 1st Responders



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SIRM "White-Collar" Exemptions 



<https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime>

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SIRM Improper Deductions and Safe Harbor 

Employers can lose the overtime exemption for improper pay deductions.

A safe-harbor provision prevents an employer from losing the exemption where the employer:

- Has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism.
- Reimburses employees for any improper deductions.
- Makes a good-faith effort to comply in the future.

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SIRM The "Overtime Rule"

Non-Exempt threshold	Year	HCE threshold
\$23,660	2000	\$100,000
\$47,476	2016	\$134,004
\$35,568	2020	\$107,432
\$43,888	July-2024	\$132,964
\$58,656	2025	\$151,164

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SIRM Improper Deductions Examples

Allowable	Not Allowable
<ul style="list-style-type: none"> • During first or last week of employment. • Personal day (full-day) • FMLA leave (full day) • FMLA leave (partial-day) • Sickness or disability <i>with</i> a bonafide leave plan in place (full-day) • Disciplinary suspension for violating workplace conduct rules (full-day) • Major safety violations (full- or partial-day) 	<ul style="list-style-type: none"> • Personal day (partial-day) • Sickness or disability <i>without</i> a bonafide leave plan in place (full- or partial-day) • Sickness or disability <i>with</i> a bonafide leave plan in place (partial-day) • Disciplinary suspension for violating workplace conduct rules (partial-day) • Holiday (full- or partial-day) • Business closures (full- or partial-day) • Poor job performance • Jury or witness duty or temporary military duty

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SIRM FLSA Overtime Pay Provisions

- Sets rate of overtime pay (1.5 times regular rate of pay after 40 hours worked).
- Sets workweek as any fixed, recurring period of 168 consecutive hours (7 days × 24 hours).
- Requires overtime on time worked, not time compensated.
- Requires overtime to be paid in form of wages, except for public-sector employees. (Presently, compensatory time is not allowed for private-sector nonexempt employees.)

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SIRM **Other FLSA Regulations**

Child labor provisions	Restricts the hours and conditions of employment for minors
Minimum wage	Requires employers to pay covered nonexempt employees at least the federal minimum wage for all hours worked up to 40 in a workweek
Other administrative concerns	Other issues such as enforcement, claims investigations, penalties, and what to do when state laws differ from federal regulations

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SIRM **Portal-to-Portal Act**

- Amends FLSA and defines additional rules for hours worked.
- Provides guidelines on:
 - On-call/standby time.
 - Preparatory/concluding activities.
 - Travel time.
 - Training time.

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SIRM **Portal-to-Portal Act**


<https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked>

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SIRM Equal Pay Act (EPA)

Prohibits unequal pay for equal or "substantially equal" work performed by men and women (with limited exceptions).



Skills

Effort

Responsibility


Working conditions

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SIRM Employee Retirement Income Security Act (ERISA)

- Establishes minimum standards for retirement plans.
- Plans must conform to the Internal Revenue Code's requirements and ERISA to receive tax advantages.
- Sets up the Pension Benefit Guaranty Corporation (PBGC).
- Rules cover:
 - Fiduciary duties.
 - Eligibility requirements.
 - Vesting requirements.
 - Communication requirements.
 - Reporting requirements.



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SIRM Sarbanes-Oxley Act (SOX)

Defined contribution plans

- Requires plan administrators to provide at least 30-day notice of blackout period (of more than three consecutive business days).
- Places restrictions on directors or executive officers from trading of company stock.
- 30-day blackout notice must be in writing and clearly communicated.

Whistleblower provisions


- Prohibits any adverse employment action against employees because of protected whistleblowing activities.



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SIRM **Lilly Ledbetter Fair Pay Act**




- Overturned the 2007 U.S. Supreme Court decision *Ledbetter v. Goodyear Tire and Rubber Company*.
- States that the statute of limitations on pay discrimination lawsuits resets as each allegedly discriminatory paycheck is issued.
- Proactive organizations will identify and remedy any potentially discriminatory pay practices.

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SIRM **Davis-Bacon Act and Related Acts**




Davis-Bacon Act	Walsh-Healey Public Contracts Act	McNamara-O'Hara Service Contract Act
<ul style="list-style-type: none"> ▪ Requires certain federal contractors and subcontractors to pay laborers/mechanics no less than locally prevailing wages/benefits. ▪ Requires retention of records containing basic data for all employees. 	<ul style="list-style-type: none"> ▪ Establishes minimum wage, maximum hours, and health and safety standards. ▪ Requires compensation record retention. 	<ul style="list-style-type: none"> ▪ Requires certain employers to pay no less than the wages and benefits found in the locality. ▪ May require honoring previous contractor's wages from collective bargaining agreement.

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SIRM **Consolidated Omnibus Budget Reconciliation Act (COBRA)**



Provides continuous group medical coverage after a qualifying event.

Type of event determines the length of coverage, generally 18 or 36 months.

Employer can charge actual cost plus a 2% administrative fee.

Applies to employers who provide health-care benefits to 20 or more employees.

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SIRM **COBRA Coverage Amendments**

Patient Protection and Affordable Care Act (PPACA)

Generally requires group health plans to provide coverage to dependent children up to age 26.

Health Insurance Portability and Accountability Act (HIPAA)

Amended continuation coverage rules related to:

- Disability extension.
- Pre-existing conditions.
- Definition of qualified beneficiary.

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SIRM **Family and Medical Leave Act (FMLA)**

- Covers private employers that have employed 50 or more employees for 20 or more workweeks in current or preceding year.
- Provides up to 12 workweeks of unpaid, job-protected leave for incapacity due to pregnancy, prenatal medical care, childbirth; childcare following birth or placement for adoption or foster care; serious health condition of a child, spouse, parent, or the employee; for obligations arising from military service.
- Employee must have worked at least 12 months (total) for employer, must have worked 1,250 hours in past year, and must work at site within 75 miles of which 50 or more employees work.

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SIRM **FMLA Regulations**

Department of Labor regulations pertaining to:

- Absence of a legal or biological parent-child relationship.
- Health benefits continuation during FMLA leave and trigger for COBRA.
- "Spouse" definition.
- Reinstatement rights.
- Intermittent leave.
- Modified-duty programs.
- Medical certification.
- Cost containment.
- Fitness for duty.
- "Serious health condition" definition.

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SIRM **FMLA Expansion**

According to National Defense Authorization Acts provisions:

Qualified exigency leave	FMLA leave due to spouse, son, daughter, or parent being on or called to covered active duty.	Up to 12 workweeks
Military caregiver leave	FMLA leave for an eligible employee who is spouse, son, daughter, or parent of or next of kin to covered service member with serious injury or illness.	Up to 26 workweeks during 12-month period

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SIRM **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

Protects the employment, reemployment, and retention rights of persons who voluntarily or involuntarily serve or have served in the uniformed services


- Applies to virtually all employers, both public and private, regardless of size.
- VOW to Hire Heroes Act amended USERRA to recognize claims of a hostile work environment.

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SIRM


Any Questions?



- USERRA - <https://www.dol.gov/agencies/vets/programs/userra/USE-RRR-Pocket-Guide#ch2>
- FMLA- Remote workers
- COBRA & WC

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SIRM Patient Protection and Affordable Care Act (PPACA) 

- Minimum essential health coverage
- Lifetime maximum benefit limits
- Preexisting conditions
- Small employer health-care tax credit
- Preventive care
- Dependent coverage
- Uniform explanation of coverage
- Notice of material modifications
- Annual benefit limits
- State health marketplaces
- Break time for nursing mothers

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SIRM National Federation of Independent Business v. Sebelius (2012) 

U.S. Supreme Court rulings on two key PPACA provisions:

Medicaid expansion

↓

The requirement that states choose between complying with the PPACA or losing federal funding for Medicaid was ruled unconstitutional.


Individual mandate

↓

The individual mandate was ruled constitutional; Congress has the power to assess a tax against those who do not purchase insurance.


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SIRM 1095-C 


Alternative Method for Furnishing Forms

- post a notice on their website indicating that such forms are available upon request.
- ensure the notice is clear, conspicuous, and accessible to anyone entitled to such a form.
- Forms must be provided within 30 days of any request or by January 31, whichever is earlier.



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SIRM Defense of Marriage Act (DOMA) 

- Defined marriage as union of one man and one woman and allowed states to not recognize same-sex marriages recognized by other states.
- Ruled unconstitutional by Supreme Court in *United States v. Windsor* (2013) and *Obergefell v. Hodges* (2015).

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SIRM Occupational Safety and Health (OSH) Act 

Established the first national policy for workplace safety and health; requires employees to comply with OSHA standards and requires employers to provide safe and healthful working conditions for employees

- Covers virtually all workers in the country, with a few exceptions.
- Provisions are enforced by the Occupational Safety and Health Administration (OSHA).
- Overarching employee rights under the act are covered by the **General Duty Clause**.

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SIRM OSH Act Key Standards 

Emergency Exit or Evacuation Procedures	Occupational Noise Exposure	Machine Guarding
Hazard Communication	Control of Hazardous Energy	Bloodborne Pathogens
Confined Space Entry	Personal Protective Equipment	Process Safety Management

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SIRM **Drug-Free Workplace Act**




Federal contractors with contracts of \$100,000 or more and recipients of grants from federal government in any amount must:

- Develop a policy that maintains a drug-free workplace.
- Specify penalties for policy violations.
- Provide a copy of the policy to employees.
- Establish a drug-awareness program.

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SIRM **State Drug-Free Workplace Laws and Marijuana Laws**



Key questions:

If an employee uses medical marijuana, can the employee be terminated following a positive workplace drug test result?

Must an employer accommodate an employee using medical marijuana?


Do employers in states with legal recreational marijuana have to allow for marijuana use apart from participation in a recognized medical marijuana program?

Consultation with legal counsel is advisable.

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SIRM **National Labor Relations Act and Amendments**



National Labor Relations Act (NLRA)	<ul style="list-style-type: none"> ▪ Intended to protect and encourage growth of union movement. ▪ Workers have right to organize and bargain collectively with employers. ▪ National Labor Relations Board (NLRB).
Labor-Management Relations Act	<ul style="list-style-type: none"> ▪ Significantly amended NLRA to restrict activity and power of unions.
Labor Management Reporting and Disclosure Act	<ul style="list-style-type: none"> ▪ Amended NLRA to regulate internal union affairs and the relationship between union officials and union members.

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SIRM **NLRB Enforcement** 


The NLRB protects the self-organization rights of employees to:

- ✓ Form, join, or assist labor organizations.
- ✓ Bargain collectively through representatives of their own choosing.
- ✓ Engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.
- ✓ Refrain from any or all such activities.

The NLRB investigates charges of unfair labor practices.

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SIRM **Key Cases** 

**NLRB v. Weingarten
(1975)**


- Deals with the rights of union employees to have another person present during investigatory interviews (the so-called **Weingarten rights**).
- Person attending must be affiliated with the union, not an attorney or relative.

**Lechmere, Inc. v. NLRB
(1992)**

- Deals with NLRA rights of employees to self-organize to form, join, or assist labor organizations; makes interfering with employees as they exercise their rights a ULP for employer.
- The NLRA confers rights only on employees, not on unions or their nonemployee organizers.

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SIRM **Employee Polygraph Protection Act (EPPA)** 

- Regulates the use of polygraph tests.
- Allows the use of polygraph tests when:
 - The employer is the federal, state, or local government.
 - **Current employees** are under **reasonable suspicion** of involvement in workplace incident that results in economic loss.
 - **Prospective employees** will work in **security-sensitive, drug manufacturing, or intelligence situations**.
- Employer may not discharge an employee based solely on test results or refusal to test.

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SIRM **Worker Adjustment and Retraining Notification (WARN) Act**



Requires a minimum of 60 days' notice for:

- Plant closings.
- Mass layoffs.

Limited exceptions: faltering company, unforeseeable business circumstances, natural disaster

Requires that notice be given to:


- Affected workers or their representatives.
- State dislocated worker units.
- Local government.

Employers must check state and local laws for other criteria and "mini WARN" laws that may apply.

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SIRM **Electronic Communications Privacy Act (ECPA)**




Employers should not monitor emails **while in transmission** but only after sent or received.

Makes it unlawful to intercept messages in transmission, access information stored electronically, or disclose any of that information.

Employers should also have carefully crafted communication policy.

Also applies to Internet searches.


Civil and criminal penalties may arise as a result of violations.



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SIRM



Board Adopts New Standard for Assessing Lawfulness of Work Rules

Office of Public Affairs
202-273-1991
publicinfo@nrlb.gov
www.nrlb.gov



August 02, 2023

Today, the NLRB issued a decision in *Stericycle Inc.*, adopting a new legal standard for evaluating employer work rules challenged as facially unlawful under Section 8(a)(1) of the National Labor Relations Act. Today's decision overrules *Boeing Co.* (2017), which was later refined in *LA Specialty Produce Co.* (2019). The new standard builds on and revises the *Lutheran Heritage Village-Livonia* (2004) standard. The Board had previously invited parties and amici to submit briefs addressing whether the Board should reconsider the *Boeing* standard.

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SIRM **Records Management**

A central dark blue box contains the text "Requirements may depend on...". Four light yellow boxes are arranged around it, each containing a factor: "Federal and state statutes/regulations" (top-left), "Status as government contractor or subcontractor" (top-right), "Number of employees or purpose of record keeping" (bottom-left), and "Industry, location, or customers" (bottom-right). A blue recycling-style icon is in the top right corner of the slide.

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SIRM **Electronic Record Keeping**

A checklist with four items, each preceded by a checkmark. A blue recycling-style icon is in the top right corner of the slide.

- ✓ Systems must have reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of records.
- ✓ Records must be maintained in reasonable order in a safe and accessible place.
- ✓ Records must be able to be converted to paper format.
- ✓ Adequate records management practices must be in place.

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