

The Future of HR Compliance

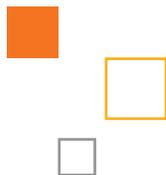
10 Ways to Minimize Risk &
Prepare for What's Next





What's Inside:

Executive Summary	3
New Overtime Rules: A Return to Obama-Era Labor Policies?	4
Pay Transparency: Forget Everything You Know about Salary Disclosures	7
Ban the Box: The Future of Fair Hiring Is Being Worked Out in Real Time	10
Remote Employees: Legal Issues aren't Going Away	13
Paid Leave: Did the Pandemic Change Everything?	16
Data Privacy and Security: States Are Taking the Lead	19
Vaccine Mandates: Off and On Again?	22
Renewed ACA Enforcement	25
The Mental Health Parity and Addiction Equity Act	28
State-Run Auto-IRAs: The Future of Savings?	31
About Paycor	34



EXECUTIVE SUMMARY

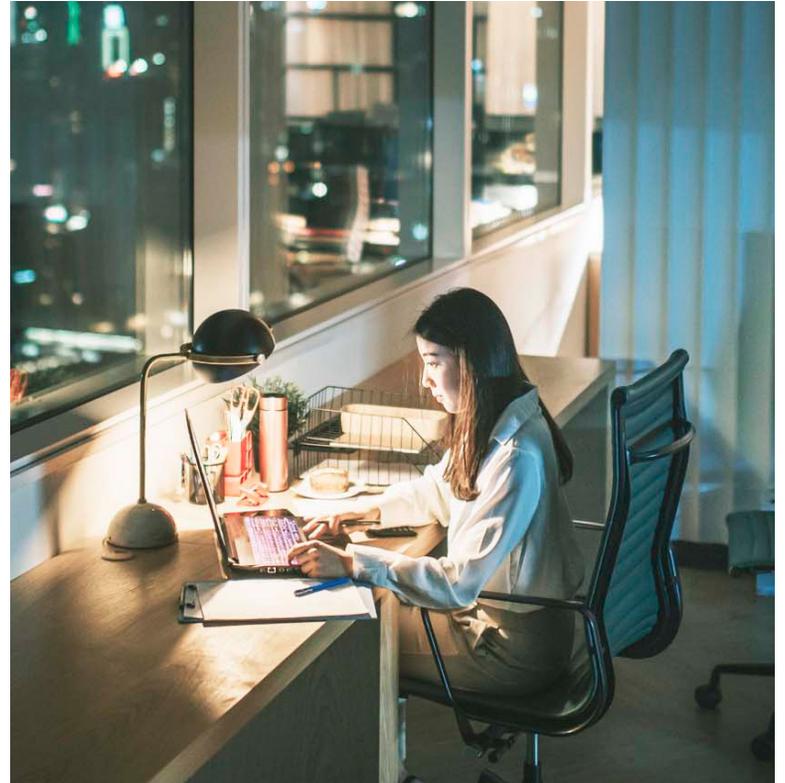
The future of HR compliance will be shaped by 3 things:

#1) The aftermath of the pandemic. COVID was a stress test on every business of every size in every industry. It was also a stress test on workers. How much worker expectations have changed on paid leave, remote work, wellbeing and other issues will shape the future of employment law in the decade to come.

#2) A patchwork of state and local laws. Legal questions about employers' rights and employers' responsibilities remain unresolved at the federal level, so states and cities are taking action, creating a patchwork of regulations that stress HR & finance leaders' abilities to keep up.

#3) Investment in HR tech to automate compliance. Almost 50% of organizations plan to increase spending on their HR solutions in 2022-23. As compliance becomes more complex, look for small and mid-sized companies to look for HR tech to automate the process.





New Overtime Rules:

A Return to Obama-Era
Labor Policies?





WHAT IT IS:

Employees covered by the FLSA must receive overtime pay of at least 1.5x their regular hourly rate for hours worked in excess of 40 per week. In 2019, the DOL raised the salary threshold from \$23K to \$35,568, expanding the benefit to 1.3 million workers.

- Like minimum wage, overtime is a concept born out of FDR's New Deal. But like most federal labor laws, the benefits aren't indexed to inflation, so prepare for turbulence as politicians hammer out what that key salary threshold should be.

WHY IT MATTERS:

Congressional members have urged the Secretary of Labor to increase the exempt salary amount to \$82K/year by 2026 with automatic updates. How much that urging will persuade the agency remains to be seen.





HOW IT COULD AFFECT YOU:

Admin burden: Any change to the salary cap (especially a big one) would trigger a massive HR headache, as reclassifying employees is hard work and for most mid-sized companies, impractically time consuming to do manually.

How to get a head start: In preparation for an increase in the eligibility threshold, HR can review job duties of all salaried employees (beyond just doing the easy part of identifying employees whose salaries are below the proposed threshold). Ensuring that the employees' duties are consistent with the exemption relied upon, regardless of the salary threshold, helps you avoid potential misclassification liability.

Can your HR software do this?

- ✓ **Track, report, and predict** overtime expenses.
- ✓ **Monitor overtime** by department, manager, location.
- ✓ **Analyze trends** and help you optimize labor costs.
- ✓ Easily produce **headcount analysis** reports.





Pay Transparency:

Forget Everything You Know
about Salary Disclosures



WHAT IT IS:

Pay transparency is the practice of making compensation figures public. In the absence of robust federal laws, keep an eye on what's happening at the state level:

- New York City employers must disclose the minimum and maximum salaries on job postings starting May 15, 2022.
- 14 states and counting have laws that prohibit employers from asking job candidates their salary history, and 20 states (plus D.C.) protect workers who talk about and share pay info.

WHY IT MATTERS:

Job seekers and employees, especially younger workers, are pushing for more transparency as the first step toward pay equity (*Marketplace-Edison*). The gap between men's and women's pay is close to \$0.20 for each dollar earned. But if you work for the federal government, where pay rates are transparent, the gap is less than \$0.10 (*BLS*).





HOW IT COULD AFFECT YOU:

Pay transparency raises the stakes of your comp strategy.

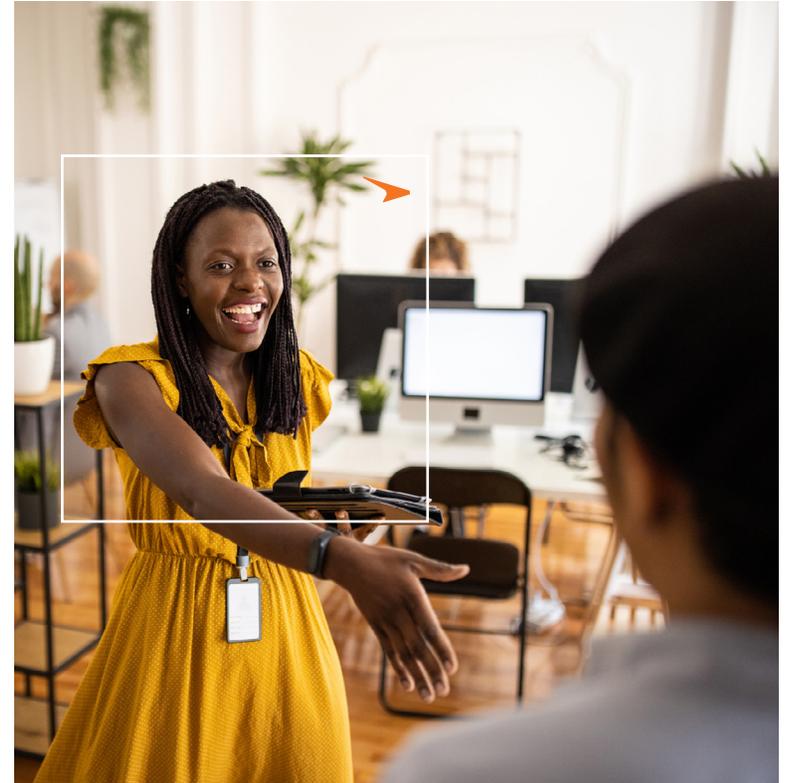
Are job candidates being offered more than current employees for the same work? Are competitors offering more for key roles? In a more transparent world, everything's public knowledge.

Admin burden: if required by law, you may suddenly need to develop salary bands for every role.

Can your HR software do this?

- ✓ **Analyze real time data** to ensure fair pair practices.
- ✓ **Compare comp** across various attributes, like department, job title, and more.
- ✓ **Plan and execute pay increases & bonuses.**
- ✓ Resolve vague expectations in job descriptions.





#3

Ban the Box:

The Future of Fair Hiring is Being Worked Out in Real Time



WHAT IT IS:

Ban the box refers to a checkbox on applications that asks candidates to disclose prior criminal convictions. The Fair Chance Act of 2019 restricts federal contractors from requesting criminal history from certain applicants until a conditional offer of employment has been made.

- **Most current regulations apply only to public employers,** but blanket ban the box laws impacting all sectors are gaining momentum.
- 37 states and 150+ localities ban the box.

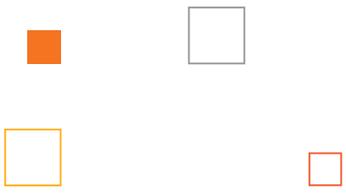
WHY IT MATTERS:

Approx. 1 in 3 Americans have a prior arrest or conviction.

(NELP)

Some say ban the box is the only way to get to fair employment practices. Others say it increases unconscious bias, as employers “guess” who has a criminal background. How effective are ban the box laws? Look to states and cities to figure it out as they become mini laboratories, testing in real time what works and what doesn’t.





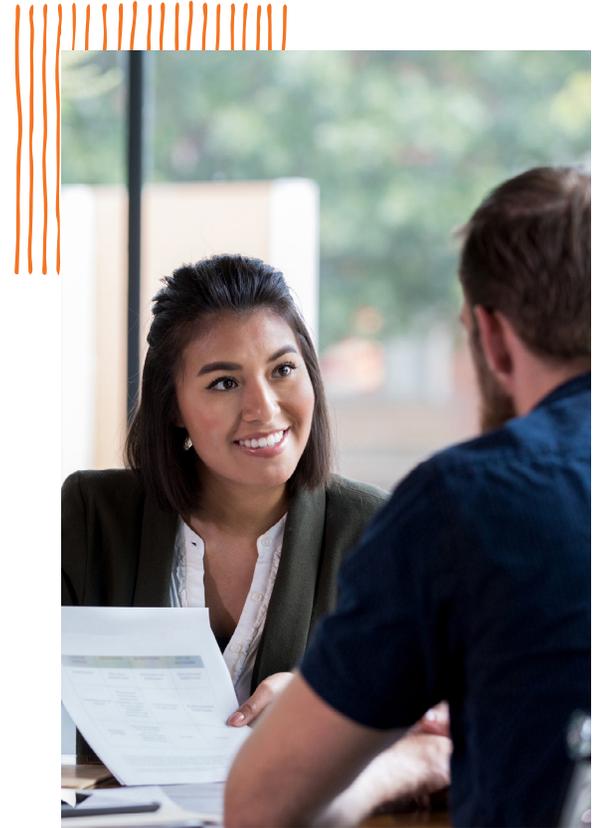
HOW IT COULD AFFECT YOU:

Ban the box laws don't prevent negligent hiring lawsuits. HR and hiring managers need to strike a balance between competing interest.

Employers that do business in multiple jurisdictions need to keep track of a patchwork of regulations.

Can your HR software do this?

- ✔ **Automate a recruiting process** that complies with state & local laws.
- ✔ **Optimize recruiting** to run more efficiently, without breaking any rules.
- ✔ Provide **interview scorecards** that make hiring decisions more objective.

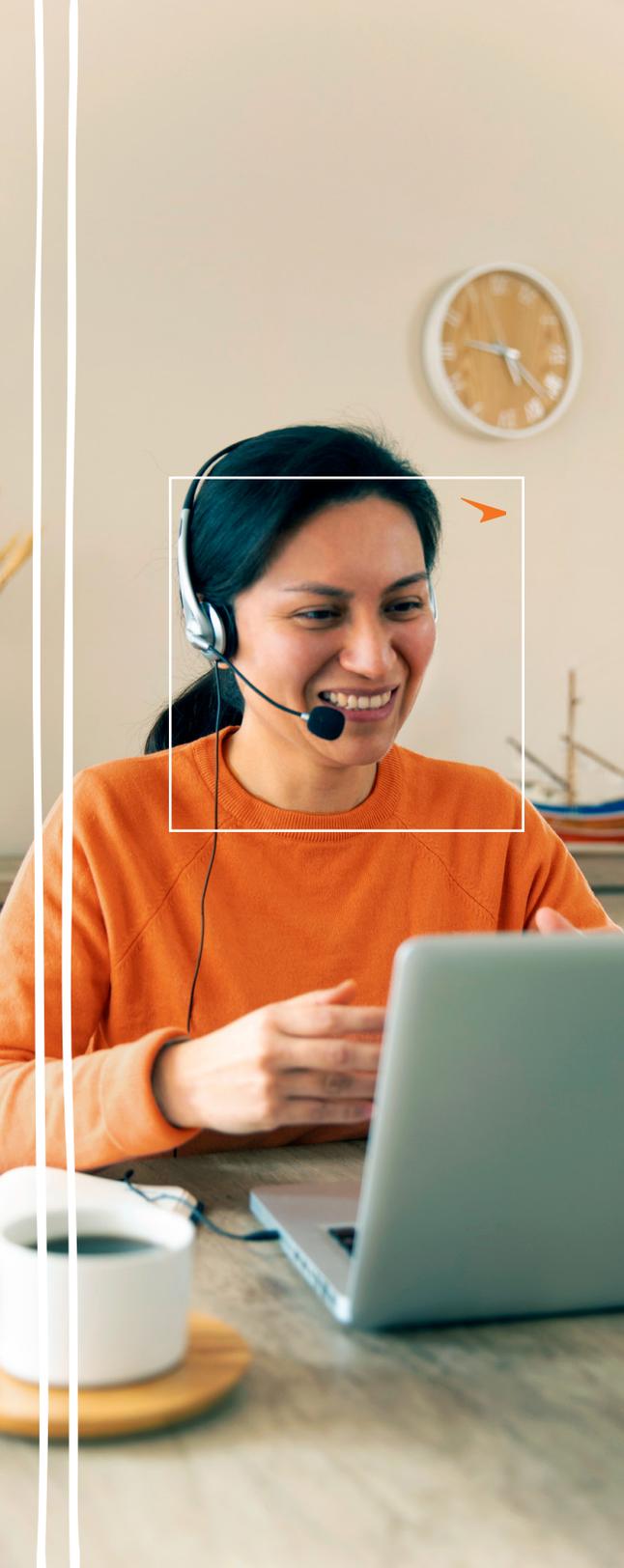




#4

Remote Employees:

Legal Issues aren't Going Away



WHAT IT IS:

If remote employees work in a state that's not where your company is headquartered, you may be subject to a "choice of law" analysis to determine which state's laws are applicable. For tax purposes, employers generally withhold taxes based on where an employee works. Employers who are deemed mandatory withholding agents must be aware of the various registration, withholding, and reporting requirements in those states where employees work from home offices.

32% of workers are remote, up 17% from 2019.

(Gartner)

WHY IT MATTERS:

If you have remote employees in other states who decide to take legal action against your company, they'll file where the laws are most advantageous. If that's their home state, you're most likely at a disadvantage. It's more expensive and your legal team will likely be out of their element. From the payroll tax perspective, as a mandatory withholding agent with a work location in a state, an employer must register with the applicable tax agencies. This means additional tax filing responsibilities and more regulations to monitor.



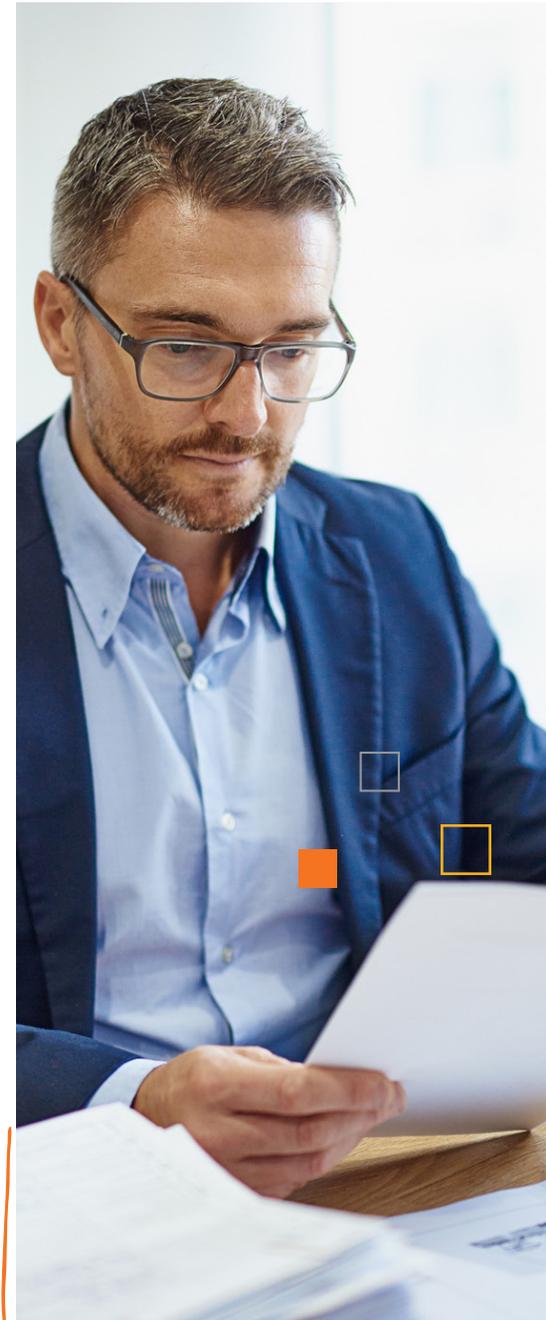
HOW IT COULD AFFECT YOU:

You need clear HR policies: Documenting employment policies is essential. In the event of an employer/employee lawsuit, the employment contract should establish which state laws apply, regardless of where the suit was filed.

You may need to register with additional tax agencies: State and local income tax withholding, state unemployment, state disability, and state paid family leave (where applicable) are all determined by where an employee works. If a remote employee is working in a state or locality where your business has not been located before, you will need to register with the applicable tax agencies to ensure proper taxes are withheld and remitted.

Can your HR software do this?

- ✔ Alert admin to any **timecard/overtime red flags**.
- ✔ Keep you **tax compliant** in challenging jurisdictions.
- ✔ Provide **real-time data** and trends on your workforce.
- ✔ **Track performance reviews**, feedback, progress and goals.
- ✔ **Notify workers on their mobile devices** of updated policies.





#5

Paid Leave:

Did the Pandemic
Change Everything?



WHAT IT IS:

The pandemic was a stress test for every type of business, but blue collar and hourly workers got hit hardest. Millions of them don't have paid sick leave benefits.

- FMLA requires companies with 50+ FTEs to provide unpaid leave to certain employees.
- Current federal law provides no national paid leave, though 9 states and Washington, D.C., passed paid family medical-leave laws (up from 4 in 2016).
- A growing number of states are going in the opposite direction, prohibiting local governments from passing paid leave laws.

WHY IT MATTERS:

In addition to the fragmentary nature of paid leave laws, business leaders are scrambling to find ways to make paid leave work, as it can be a decisive recruiting and retention tactic.

50%

of workers say they'd rather have more paid leave than a pay raise.

(Deloitte)

Nearly 40%

of workers said their employer had added or expanded paid sick leave.

(McKinsey Survey)





HOW IT COULD AFFECT YOU:

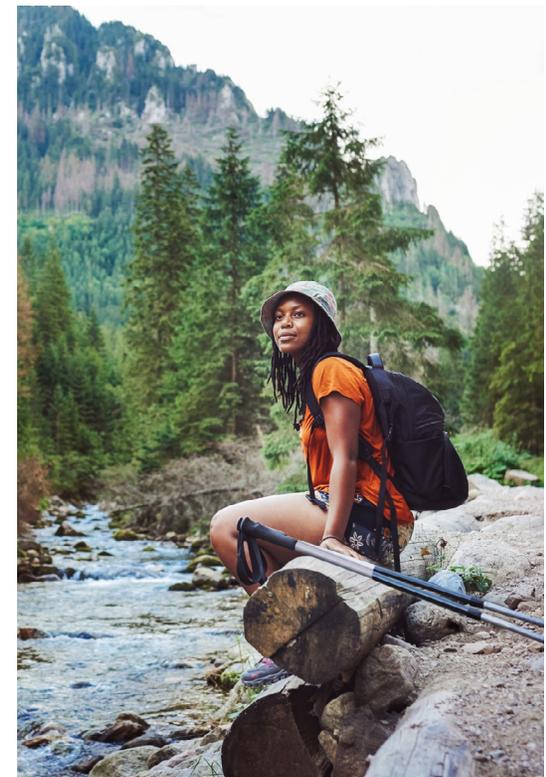
The future of paid leave is most likely an increasingly complex patchwork of state and local regulations—yet another HR headache.

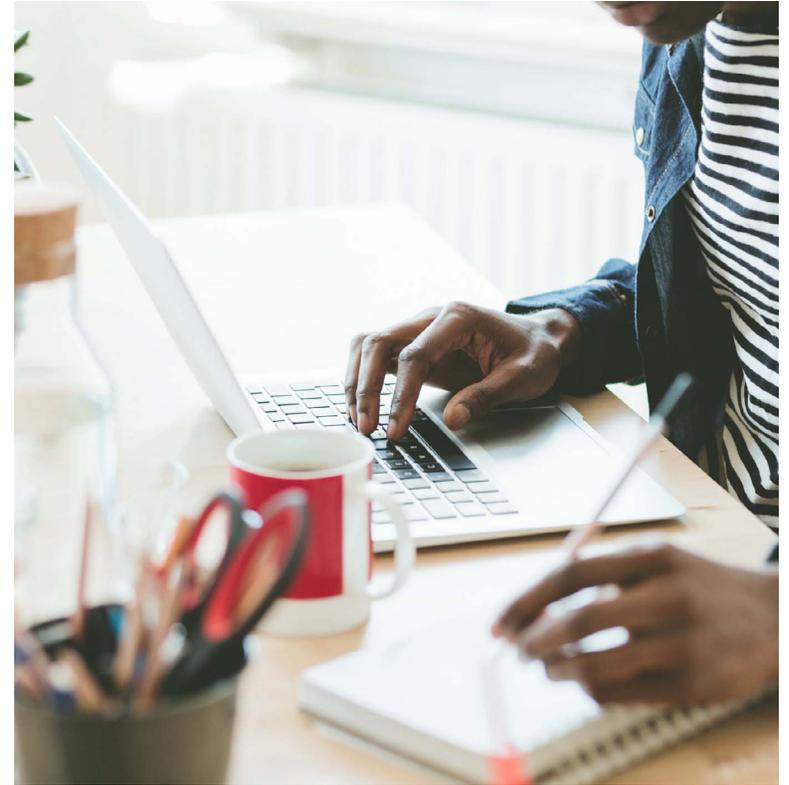
States' structure paid leave programs in different ways. Some add a payroll tax component (employer and/or employee) to their paid leave programs, while other states require accrual of paid leave hours based on time worked.

Listening to employees is more important than ever. In a competitive job market, business leaders need to know what motivates workers.

Can your HR software do this?

- ✓ **Gauge employee sentiment** on paid leave and other issues.
- ✓ Provide **actionable data analytics** to help inform business decisions
- ✓ Make it easy for employees to **manage their PTO on a mobile device.**
- ✓ Create **flexible schedules** that give employees control over their work lives.





Data Privacy and Security:

States Are Taking the Lead



WHAT IT IS:

California passed legislation (CCPA and CPRA) that allows people greater control of their data, including individuals in an employment context (so, think about all that HR data your company collects). While the CCPA applies only in part to HR data, the CPRA, slated to go into effect January 1, 2023, will require employers to implement comprehensive privacy programs for HR data (assuming the law is not amended in 2022). Once considered an outlier, California is becoming the blueprint for future data privacy laws.

- Approx. 24 bills based on CCPA and CPRA are pending in state legislatures. **Nearly half include protections for HR data.**

WHY IT MATTERS:

If states pass expanded privacy laws, HR may become more involved in crafting detailed privacy policy, ensuring that personal data is handled appropriately and taking measures to safeguard data. In addition to compliance considerations, there's a good reason to brush up on data security, as cybercrime, especially directed at businesses, is surging.





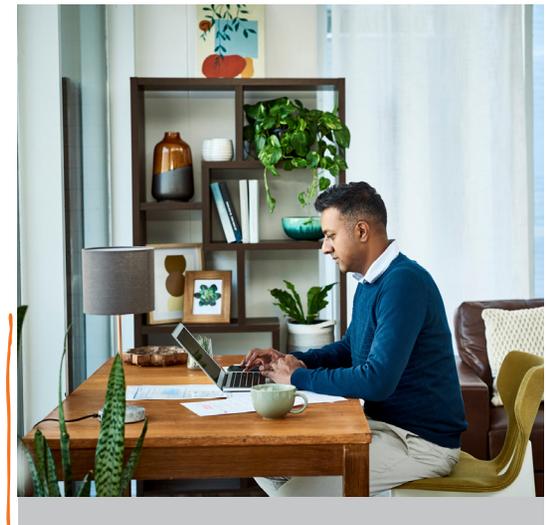
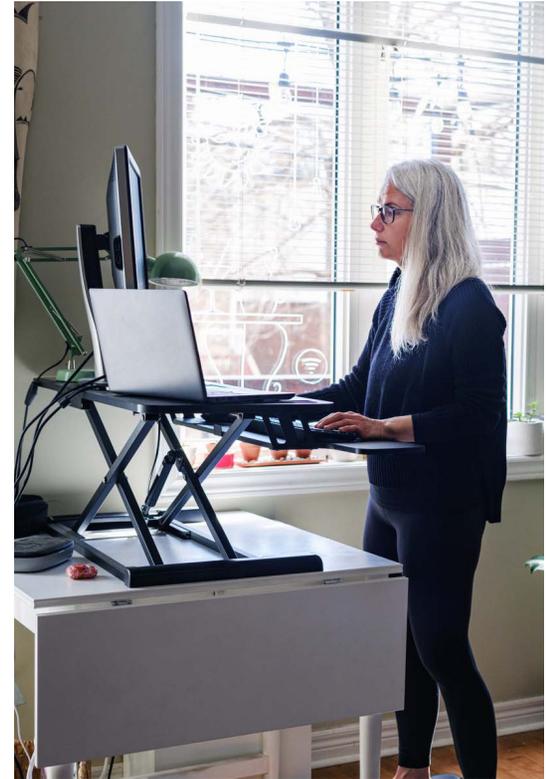
HOW IT COULD AFFECT YOU:

The risk environment has changed. **Since half the workforce went remote, nearly every type of cyber risk has skyrocketed.** Encrypted threats spiked by 167%, ransomware by 105%, and intrusion attempts by 11% (*SonicWall's 2022 Cyber Threat Report*).

Now's a great time to train employees on proper data handling. Only 44% of businesses require cybersecurity training focusing on malware and phishing (*Malwarebytes*).

Can your HR software do this?

- ✔ Store data in **enterprise-class data centers** that can detect patterns and signatures of malicious activity.
- ✔ Employ **multi-factor authentication** for enhanced data protection.
- ✔ Provide security protocols developed by a **risk assessment team**.
- ✔ Use **behavioral analytics** to proactively isolate infected endpoints before a data breach occurs.
- ✔ Deliver **employee training** and track course progress and completion.





Vaccine Mandates:

Off and On Again





WHAT IT IS:

While the federal COVID-19 **vaccine mandate for business with 100+ employees is officially off the table, that doesn't mean states or employers don't have the option to enact their own.** And some states are going in the opposite direction.

- Florida, Montana, and Tennessee have enacted laws that prohibit private businesses from pursuing vaccine mandates.

WHY IT MATTERS:

The vaccine battle is far from over, so keep an eye on what happens at the state and local levels, especially if you do business in multiple states. And when it comes to recruiting and retaining employees, it can feel like a lose/lose situation. Some employees will only work for companies that require vaccination; others won't get the shot under any circumstances.





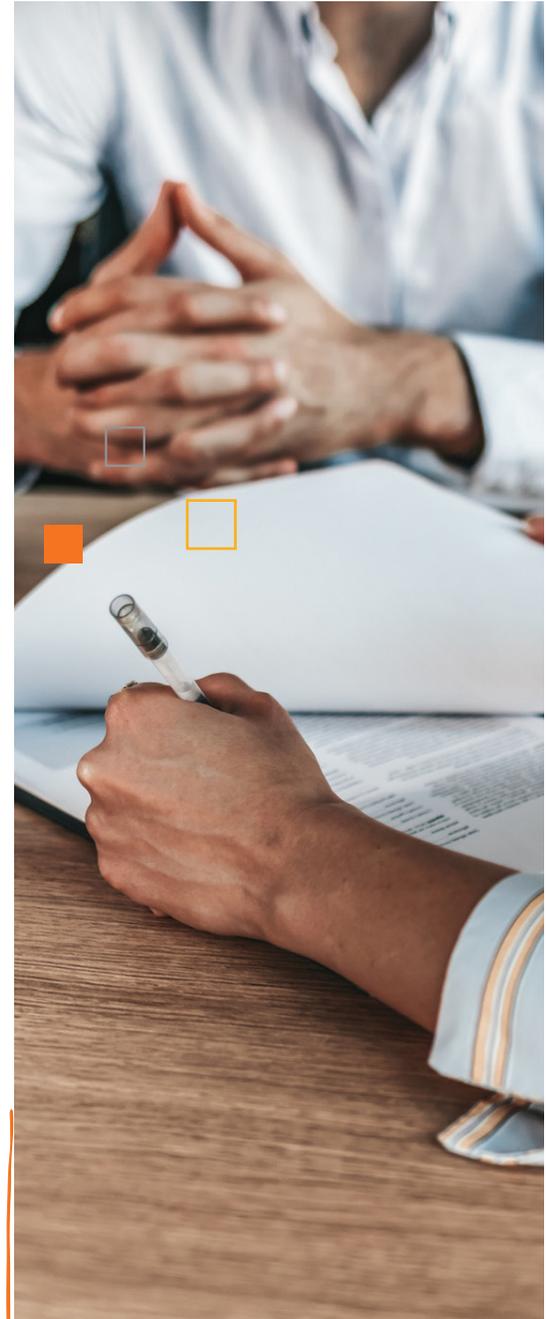
HOW IT COULD AFFECT YOU:

You might be required to track vaccine compliance or COVID testing. If you are required to track vaccinations or testing, a manual system of spreadsheets can be an excessive burden on HR.

Keeping a finger on the pulse of your employees is more important than ever. Will they quit if you institute a mandate? Will they quit if you don't? You'll need to show your employees your company is listening to them, adapting to the situation, and is on their side.

Can your HR software do this?

- ✓ Easily **track testing and vaccination status** with the ability to upload documentation for both.
- ✓ **Monitor virus transmission risk** and anticipate work disruptions and staffing changes.
- ✓ **Convert employee feedback into real insights** and get ahead of potential problems like turnover and low morale.
- ✓ Help you **quickly navigate compliance** and relevant legislation.

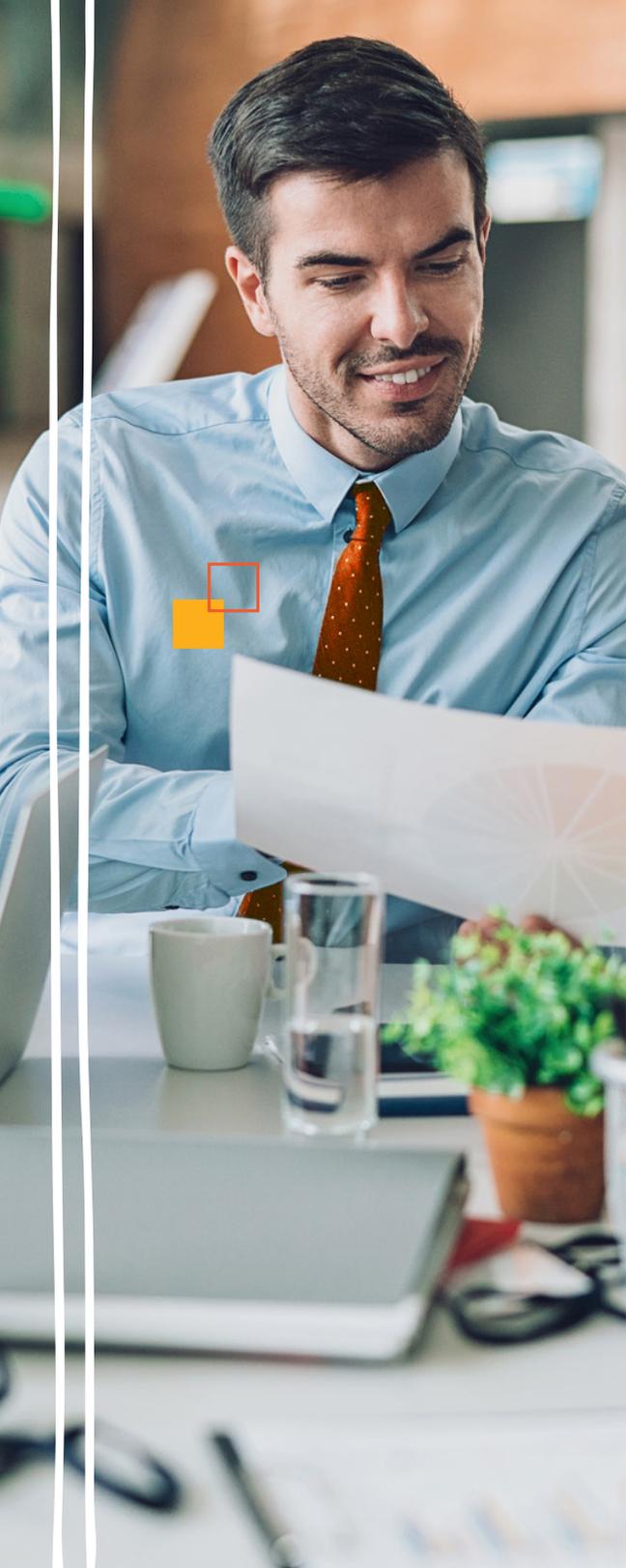




#8

Renewed ACA Enforcement





WHAT IT IS:

Beginning with the 2021 tax year, the IRS's good faith transition from penalties for incomplete or incorrect returns was dropped. Companies are required to provide timely and correct Affordable Care Act Employer Shared Responsibility (ESR) forms.

- Effective January 1, 2022, employer health plans must be no more than 9.61% of an employee's household income (down from 9.83% in 2021).
- The IRS is proposing that employers filing at least 10 Forms 1094-C and 1095-C (down from 250) will be required to electronically file by 2023.

WHY IT MATTERS:

If you're an Applicable Large Employer (ALE), you should reevaluate employee health insurance contributions to decide if adequate affordable coverage is being offered; otherwise, you could be penalized under the following rules:

- **Rule 4980H(a)** – Company fails to offer Minimum Essential Coverage (MEC) to at least 95% of full-time employees for any month during the tax year, and at least one FTE gets a Premium Tax Credit (PTC) for buying Marketplace coverage.
- **Rule 4980H(b)** – Company fails to offer coverage that meets affordability and Minimum Value (MV).
- Company fails to provide correct 1096-C payee statements or fails to file proper ACA information returns by August 1, 2023.



HOW IT COULD AFFECT YOU:

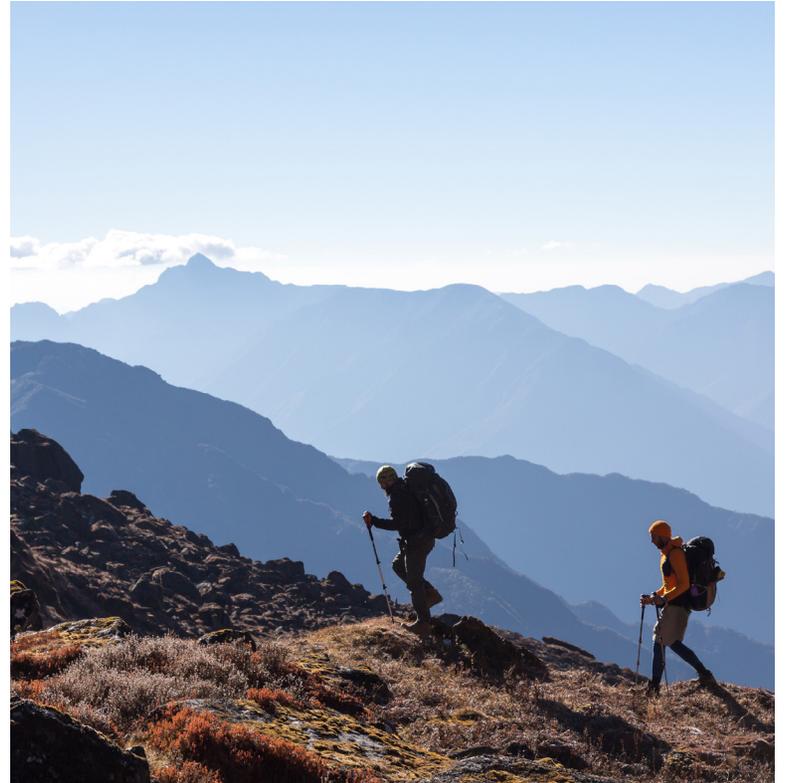
If you're audited and found out of compliance with either of the 4980 rules, fines can be steep.

- **4980H(a)** can result in a penalty of \$229.17 per month or \$2,750 per year, per employee.
- **4980H(b)** can net fines of \$343.33 per month or \$4,120 per year, per employee.
- Failure to file and failure to furnish penalties are \$280 per employee, but that amount increases to \$570 if your company is found to be willfully disregarding responsibilities.

Can your HR software do this?

- ✓ **Provide an error management system**, real-time alerts, and in-app training.
- ✓ **Manage employee benefits** through an **online platform which integrates** with payroll, time, and the IRS.
- ✓ **Track hours** to determine which employees are eligible for benefits.
- ✓ Provide **interactive dashboards** to identify eligibility across administrative periods and compare past and current measurement periods.





The Mental Health Parity and Addiction Equity Act





WHAT IT IS:

The MHPAEA is a federal law requiring health insurers to provide mental health and substance abuse disorder services that are equal to medical/surgical services. So, if your plan offers unlimited doctor visits for a chronic condition like diabetes, it must offer unlimited visits for a mental health condition like depression.

- **Most companies with 51+ employees must abide by MHPAEA.** If your state has stronger mental health parity laws, health insurance plans must follow those laws.

WHY IT MATTERS:

The pandemic increased substance abuse and mental health conditions like anxiety and depression. It's critical to offer comprehensive coverage for these types of disorders. Too often, health plans and insurance companies fall short of providing access to treatment, which creates barriers to affordable, accessible care and reinforces a stigma around seeking mental health treatment.

- From April 2020-April 2021, more than 100,000 Americans died of an overdose. That's a 30% increase YoY (CDC).





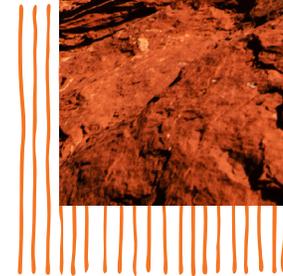
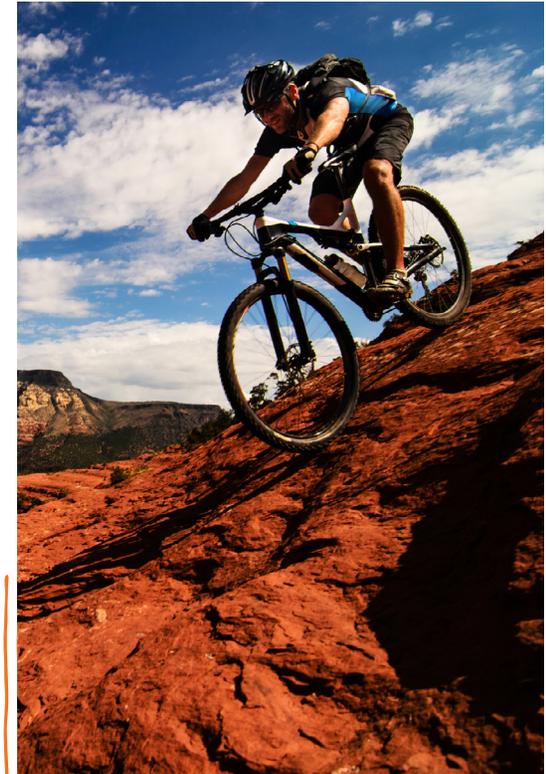
HOW IT COULD AFFECT YOU:

In January 2022, the DOL announced a prioritization of MHPAEA enforcement. In 2021, United Healthcare agreed to pay \$15.6 million to affected parties and in fines to settle alleged violations against the MHPAEA.

- **Employers should consider any actions necessary to ensure compliance with MHPAEA and the new comparative analysis requirements.** Review your benefits and determine where additional offerings may be valuable and where unnecessary restrictions can be removed. Document your comparative analysis to show compliance or have a plan in place with your carrier or TPA to provide this analysis if requested by plan participants, the DOL, or state agencies.

Can your HR software do this?

- ✓ **Automate and streamline** open enrollment.
- ✓ **Deliver decision support tools** to help employees choose their benefits.
- ✓ **Allow employees to update their profiles, triggering workflows** through to carriers.





#10

State-Run Auto-IRAs:

The Future of Savings?





WHAT IT IS:

Auto-IRAs aim to make retirement plans available to employees who are not otherwise able to take advantage of them. Eligible employees are automatically enrolled at the default contribution rate. The federal government attempted to require certain employers to proactively enroll employees in auto-IRAs. That mandate was eliminated, but...

- A growing number of states have introduced or passed legislation requiring employers to either enroll employees in state-run retirement accounts or provide a plan of their own.

WHY IT MATTERS:

Nearly 60% of working Americans don't have retirement plans.

(National Institute on Retirement Security)

Many smaller employers don't offer a 401(k) plan, but that could change as momentum builds at the state and local level.

- More than a third of Americans (36%) have never had any type of retirement account and about half of those that do have one say they're behind on retirement savings (*Bankrate*).





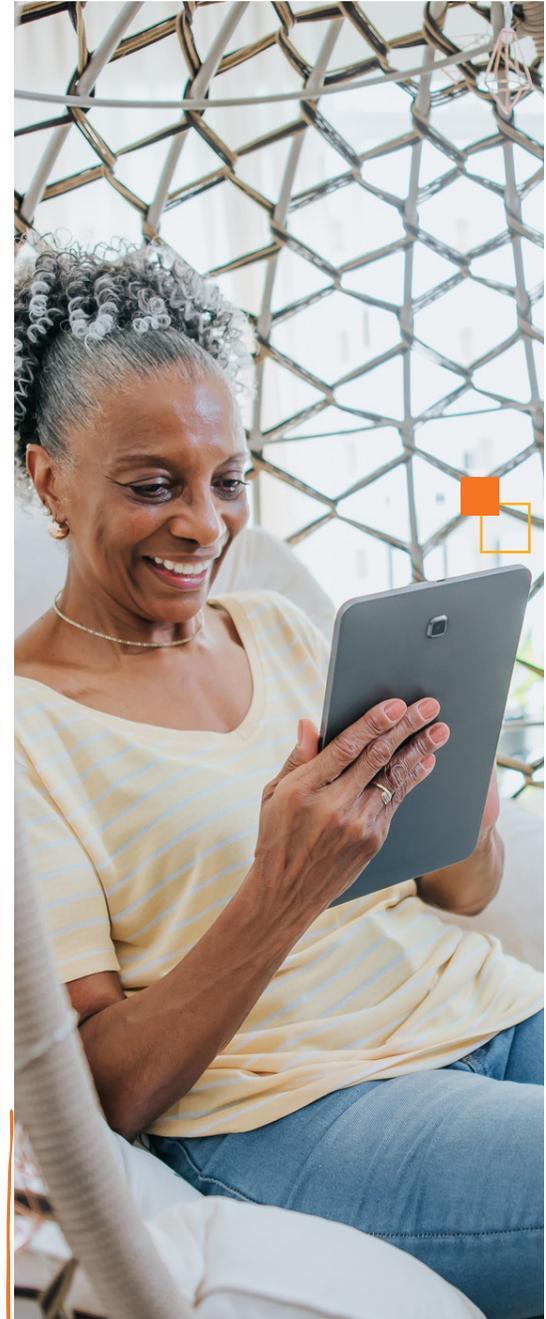
HOW IT COULD AFFECT YOU:

In states which have an auto-IRA requirement, businesses that do not comply can be subject to penalties. Businesses mandated to provide an auto-IRA are prohibited by the DOL from making contributions to the plan, so there's no burden on HR there; however, **HR will be responsible for administrative tasks such as:**

- Creating enrollment materials
- Forwarding salary deferrals to the program
- Providing annual program notices
- Maintaining employee contribution records
- Providing compliance information to the state

Can your HR software do this?

- ☑ **Integrate benefits and payroll** so changes trigger updates across the board.
- ☑ **Enable new hires and employees to elect or opt out of benefits** without involving HR.
- ☑ **Educate and guide employees** about their benefits options.





About Paycor

Paycor builds HR software for leaders. Our Human Capital Management (HCM) platform modernizes every aspect of people management, from the way you recruit, onboard and develop people, to the way you pay and retain them. But what really sets us apart is our focus on business leaders. For 30 years, we've been listening to and partnering with leaders, so we know what you need: HR technology that saves time, powerful analytics that provide actionable insights and a Personalized Support Model. That's why more than 29,000 customers nationwide trust Paycor to help them solve problems and achieve their goals.

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